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1  
2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK  
4 CIVIL DIVISION

-----X

JAMES MORALES,

PLAINTIFF,

-against-

Case No.:

1:16-cv-02134-ALC-JLC

9 KAVULICH & ASSOCIATES, P.C., GARY  
10 KAVULICH, ROSEWALL GARDENS ASSOCIATES, LP,  
11 F/K/A ROSEWALL GARDENS ASSOCIATES, and  
ROSEWALL, INC.,

DEFENDANTS.

-----X

DATE: November 17, 2016

TIME: 9:30 A.M.

CONTINUED DEPOSITION of the

Defendants, KAVULICH & ASSOCIATES, P.C. and

GARY KAVULICH, by a witness GARY

KAVULICH, taken by the Plaintiff, pursuant

to a Notice of Appearance and to the

Federal Rules of Civil Procedure, held at

the Law Office of Ahmad Keshavarz, 16 Court

Street, Brooklyn, New York 11241, before

Elizabeth Forero, a Notary Public of the

State of New York.

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## 1 APPEARANCES:

3 LAW OFFICE OF AHMAD KESHAVARZ

4 Attorneys for the Plaintiff

JAMES MORALES

5 16 Court Street

6 Brooklyn, New York 11241

BY: AHMAD KESHAVARZ, ESQ.

-and-

7 JESSICA MOODY, LAW CLERK

9 CAMBA LEGAL SERVICES, INC.

10 Co-Counsel for Plaintiff

JAMES MORALES

11 885 Flatbush Avenue

12 Brooklyn, New York 11226

BY: MELISSA KOVEN, ESQ.

13 MITCHELL L. PASHKIN, ESQ.

14 Attorneys for the Defendants

15 KAVULICH & ASSOCIATES, P.C., GARY

16 KAVULICH, ROSEWALL GARDENS ASSOCIATES,

LP, F/K/A ROSEWALL GARDENS ASSOCIATES,

ROSEWALL, INC.

17 775 Park Avenue, Suite 255

18 Huntington, New York 11743

BY: MITCHELL L. PASHKIN, ESQ.

20 \* \* \*

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## 1 FEDERAL STIPULATIONS

2  
3  
4  
5 IT IS HEREBY STIPULATED AND AGREED by and  
6 between the counsel for the respective  
7 parties herein that the sealing, filing and  
8 certification of the within deposition be  
9 waived; that the original of the deposition  
10 may be signed and sworn to by the witness  
11 before anyone authorized to administer an  
12 oath, with the same effect as if signed  
13 before a Judge of the Court; that an  
14 unsigned copy of the deposition may be used  
15 with the same force and effect as if signed  
16 by the witness, 30 days after service of  
17 the original & 1 copy of same upon counsel  
18 for the witness.

20 IT IS FURTHER STIPULATED AND AGREED that  
21 all objections except as to form, are  
22 reserved to the time of trial.

23 \* \* \* \*

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58

59

1 G. KAVULICH

2 GARY KAVULICH, called as a

3 witness, having been first duly sworn by a

4 Notary Public of the State of New York, was

5 examined and testified as follows:

6 EXAMINATION BY

7 MR. KESHAVARZ:

8 Q. Please state your name for the  
9 record.

10 A. Gary Kavulich.

11 Q. Where do you reside?

12 A. 147 Grace Church Street, Rye,  
13 New York 10580.

14 Q. Good morning. Thank you for  
15 coming back. So let's pick up where we  
16 left off before but let's go over  
17 logistics. I know we are running late.  
18 What time do you have to leave today?

19 A. 2:30.

20 Q. I was going through questions,  
21 but I know we had an agreement before that  
22 we could use the other deposition testimony  
23 in this case at least for background  
24 purposes; right?

25 MR. PASHKIN: Yes.

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1 G. KAVULICH  
 2 MR. KESHAVERZ: Would you be  
 3 agreeable to use it for all purposes  
 4 because I don't want to go through  
 5 all questions that may or may not be  
 6 background. So can we use it for all  
 7 purposes generally?  
 8 MR. PASHKIN: Subject to, you  
 9 know, my right to object to  
 10 relevance, in other words, is that  
 11 fair?  
 12 MR. KESHAVERZ: If you objected  
 13 to form before.  
 14 MR. PASHKIN: In other words, I  
 15 don't, in other words, I can't, you  
 16 want to use it in general, I don't  
 17 know exactly how you want to use it.  
 18 I just want to reserve my rights, in  
 19 other words, you try to take a  
 20 deposition and an answer in that  
 21 question and say for whatever reason,  
 22 I can't know what you are going to  
 23 do. I want to reserve my right to  
 24 object to its use based on relevance.  
 25 Is that fair?

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60

1 G. KAVULICH  
 2 MR. KESHAVERZ: Yes, that  
 3 should help.  
 4 **Q.** Mr. Kavulich, were there any  
 5 e-mails sent or received regarding Mr.  
 6 Morales or his account or any attempt to  
 7 collect on his account?  
 8 **A.** Yes.  
 9 **Q.** Do you know where those e-mails  
 10 are?  
 11 **A.** **Whatever e-mails we have, I**  
 12 **gave to Mitch.**  
 13 **Q.** I could be mistaken but for the  
 14 other case we have e-mails. But for this  
 15 case, I don't believe we have e-mails.  
 16 MR. PASHKIN: I checked last  
 17 night; it was in my first  
 18 Supplemental Response.  
 19 MR. KESHAVERZ: I have a first  
 20 Supplemental Response that includes  
 21 screen shots. That was dated  
 22 November 8th. That is what I got.  
 23 Then on November 14th, I got an  
 24 accounting and then -- I see it.  
 25 Okay. Thanks.

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61

1 G. KAVULICH  
 2 **Q.** Are there any other e-mails  
 3 related to Mr. Morales other than what you  
 4 produced in this case?  
 5 **A.** **Whatever I had, I gave them to**  
 6 **Mitch.**  
 7 MR. KESHAVERZ: You gave them  
 8 all over?  
 9 MR. PASHKIN: Right.  
 10 **Q.** I am showing, and we will it  
 11 mark as an exhibit in a second, but tell  
 12 me, I am showing what has been Bates  
 13 stamped Morales 51, 52.  
 14 MR. KESHAVERZ: Off the record.  
 15 (Whereupon, an off-the-record  
 16 discussion was held.)  
 17 **Q.** Before I mark this as an  
 18 exhibit, I am showing documents Bates  
 19 stamped Morales 51 to 53. Can you identify  
 20 what these pages are and which ones go  
 21 together?  
 22 **A.** **The first page is information**  
 23 **subpoena with restraining notice.**  
 24 **Q.** Go through the other pages and  
 25 tell me what documents go together.

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62

1 G. KAVULICH  
 2 **A.** **That goes by itself. This is a**  
 3 **property execution. The second page is, I**  
 4 **guess, it is the actual levy from Marshal**  
 5 **Bigel to TD Bank.**  
 6 **Q.** The levy is Bates stamped 53?  
 7 **A.** Yes.  
 8 MR. KESHAVERZ: Let's mark  
 9 these as separate exhibits  
 10 Plaintiff's 1, 2, 3.  
 11 (Whereupon, the aforementioned  
 12 documents were marked as Plaintiff's  
 13 Exhibits 1, 2 and 3 for  
 14 identification as of this date by the  
 15 Reporter.)  
 16 **Q.** I am showing what has been  
 17 marked as Exhibits 1, 2, 3. They were  
 18 Morales 51, 52 and 53. In the process of  
 19 using the information subpoena and  
 20 restraint to my client's bank account, tell  
 21 me what the order is in that process.  
 22 **A.** **Fifty-one comes first.**  
 23 **Q.** Exhibit 1 comes first?  
 24 **A.** **Yes. Then Exhibit 2, and then**  
 25 **from the marshal would be Exhibit 3.**

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63

G. KAVULICH

**Q.** For Exhibit 3 the amounts listed as due except for poundage are all based on representations you make to the marshal about the amount due; is that correct?

**A.** The judgement amount, yes. The interest the marshal calculates. The statutory fees the marshal calculates and poundage is calculated by the marshal.

**Q.** Let's go through the first step. Number one, the information subpoena with restraining notice, is that your signature on the bottom of the document?

**A.** Yes.

**Q.** Did you sign it on or about the date indicated, which is March 18, 2015?

**A.** I assume I did. I don't remember signing this particular piece of paper.

**Q.** These bank restraint information subpoenas I believe you testified in the other case, if I am not mistaken your staff prints out a stack of bank restraints, information subpoenas,

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G. KAVULICH

income executions and so forth and you go through the stack and sign them one at a time?

**A.** Correct.

**Q.** You said before about the number that you signed per day, but we will use whatever that transcript section is. So are all the statements in Exhibit 1 true and correct?

**A.** No.

**Q.** What statements are not correct?

**A.** That there was a judgement against James Morales.

**Q.** Anything else?

**A.** I believe the remaining amounts of the judgment is incorrect.

**Q.** Anything else?

**A.** The index number is missing L & T.

**Q.** Anything else?

**A.** No.

**Q.** What you just testified to are the only things that are not true and

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correct in Plaintiff's 1; is that correct?

**A.** Correct.

**Q.** What is, in fact, the amount due on the judgment on the date you signed the information subpoena with restraining notice on March 18, 2015?

**A.** I don't know.

**Q.** We went through some of the terms before and then we used some shorthand. You sign information subpoenas; correct?

**A.** Correct.

**Q.** Information subpoenas are not necessarily with the bank restraint; correct?

**A.** Correct.

**Q.** Are they typically with a bank restraint?

**A.** They are two separate animals.

**Q.** So you have one document called the information subpoena that goes to a bank, usually to say how much money is in the account?

**A.** The information subpoena with a

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**restraining notice is what goes to the bank.**

**Q.** Do you ever send information subpoenas without a restraining notice?

**A.** Yes. To a bank?

**Q.** Yes.

**A.** You didn't say that.

**Q.** Generally, do you just send information subpoenas to collect judgments?

**A.** To any entity?

**Q.** Yes.

**A.** Yes.

**Q.** Do you send information subpoenas to banks, just the information subpoena?

**A.** Only if we believe someone is employed with the bank.

**Q.** You send out an income execution; correct?

**A.** Yes.

**Q.** To collect judgements?

**A.** Yes.

**Q.** Are those the three major mechanisms you use to collect on

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1 G. KAVULICH  
 2 judgements?  
 3 **A. Information subpoenas,**  
 4 **information subpoenas with restraining**  
 5 **notices and income executions, yes.**  
 6 **Q.** If I am going to use the term  
 7 judgment enforcement devices, would you  
 8 understand that to mean all three of those?  
 9 **A. Yes.**  
 10 **Q.** If you are ever unclear, let me  
 11 know.  
 12 **A. Okay.**  
 13 **Q.** When I say "you," you are  
 14 testifying on your own behalf and on behalf  
 15 of your law firm; correct?  
 16 **A. Yes.**  
 17 **Q.** So when I say you, will you  
 18 understand that to mean both you and the  
 19 law firm?  
 20 **A. I intellectually understand**  
 21 **that. But I ask you to be specific as to**  
 22 **who you mean in doing things.**  
 23 **Q.** When I say you, if you are ever  
 24 unclear about what you mean, would you ask  
 25 me to clarify?

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1 G. KAVULICH  
 2 **A. Yes.**  
 3 **Q.** If I ask a question and you  
 4 don't ask me to clarify, is it reasonable  
 5 for me to assume you understood the  
 6 question?  
 7 **A. Yes.**  
 8 **Q.** We were talking about Exhibit 1  
 9 the information subpoena and bank  
 10 restraint. You indicated that the total  
 11 amount claimed to be due was incorrect; is  
 12 that right?  
 13 **A. Yes.**  
 14 **Q.** How do you know that?  
 15 **A. Because it came up in, because**  
 16 **of this.**  
 17 **Q.** In what way what do you mean?  
 18 **A. Because there is a second**  
 19 **debtor on this case.**  
 20 **Q.** Clara Potter?  
 21 **A. Yes, against whom the judgement**  
 22 **is only against. And we had garnished, I**  
 23 **don't know how much, but we had garnished**  
 24 **some monies from her.**  
 25 **Q.** Are you saying the monies you

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1 G. KAVULICH  
 2 garnished from Miss Potter, were not  
 3 credited to the amount you were seeking to  
 4 collect from Mr. Morales?  
 5 **A. No, that is not right.**  
 6 **Q.** In what way is that not right?  
 7 **A. Once it was indicated that the**  
 8 **judgment, one of the judgement enforcement**  
 9 **devices, was sent, then the marshal should**  
 10 **have been told that, no, this is not the**  
 11 **correct amount.**  
 12 **Q.** In what way, is it not the  
 13 correct amount?  
 14 **A. Because this judgment**  
 15 **enforcement device did not account for the**  
 16 **monies collected from Miss Potter.**  
 17 **Q.** Why not?  
 18 **A. Because it was an oversight on**  
 19 **the person who did this.**  
 20 **Q.** Who is the person that did  
 21 this?  
 22 **A. I signed it and Collin printed**  
 23 **it.**  
 24 **Q.** Your firm is not trying to deny  
 25 responsibility?

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1 G. KAVULICH  
 2 **A. No, not at all.**  
 3 **Q.** You are not personally trying  
 4 to deny responsibility?  
 5 **A. No, not at all.**  
 6 **Q.** Now, is the, you talked about  
 7 before Collin is the person in your office  
 8 who is responsible for deciding when to  
 9 issue a post-judgement enforcement;  
 10 correct?  
 11 **A. The computer brings it up, but**  
 12 **he is the main person who then goes forward**  
 13 **on a particular case or not. Although**  
 14 **recently now, I am as involved as well.**  
 15 **Q.** After this lawsuit was filed?  
 16 **A. No, after Collin moved to Laos.**  
 17 **Q.** About when was that?  
 18 **A. The end of May or the beginning**  
 19 **of June of 2016.**  
 20 **Q.** And as I remember from before  
 21 your computer program has a number of  
 22 things, but one of the things is judgments  
 23 to be collected upon and on a regular basis  
 24 it goes through those lists and it pops up  
 25 a judgment for review to determine whether

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72

1 G. KAVULICH

2 additional post-judgment enforcement

3 mechanisms should be used; is that right?

4 **A. Yes.**

5 **Q.** And Collin makes the judgement

6 about whether to issue the post-judgment

7 enforcement mechanism?

8 **A. He and I.**

9 **Q.** Before he left, it was

10 primarily he that made the decision about

11 which post judgment enforcement mechanism

12 to issue; correct?

13 **A. Correct.**

14 **Q.** He made the decision about who

15 that particular post-judgment enforcement

16 mechanism should be directed towards;

17 correct?

18 **A. Yes.**

19 **Q.** Such as which bank, which

20 employer?

21 **A. Yes.**

22 **Q.** He would decide which of the

23 persons listed on the account here, Clara

24 Potter and James Morales here, he would

25 made the decision about which one of those

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72

73

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2 two to issue the post judgment enforcement

3 mechanism about?

4 **A. No, he would not distinguish**

5 **between these two because the computer**

6 **already had all the persons on the**

7 **judgment. So he would have just pursued**

8 **both.**

9 **Q.** At what point in time did your

10 computer have both Mr. Morales and Miss

11 Potter listed as both judgment debtors for

12 the account?

13 **A. When the case was entered.**

14 **Q.** What do you mean?

15 **A. When we initially got the case.**

16 **Q.** You got the case from whom?

17 **A. From our client.**

18 **Q.** You got the case from your

19 client to file a civil action to collect

20 rent or to engage in post-judgment

21 collection activities against both Morales

22 and Potter?

23 **A. Our client does not, at that**

24 **time we don't represent them anymore by the**

25 **way, at the time they didn't distinguish**

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73

74

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2 **between post-judgment or civil court. They**

3 **would give us a list. We would pick up the**

4 **file. We would read the documents and**

5 **proceed accordingly whether it was a**

6 **post-judgment housing court judgement in**

7 **these cases or a pure civil action.**

8 **Q.** About how many accounts did

9 this plaintiff, Rosewall Garden Associates

10 forward to you for collection?

11 MR. PASHKIN: Objection to

12 relevancy.

13 **A. Maybe a dozen, not many.**

14 **Q.** During this time you had about

15 five thousand judgment accounts to collect?

16 MR. PASHKIN: Objection.

17 **A. At what time?**

18 **Q.** You have about five thousand

19 judgments you are collecting on?

20 **A. About five thousand.**

21 **Q.** That's the judgements that come

22 up when the computer sends a cue to remind

23 Collin to do income executions?

24 **A. To search for assets.**

25 **Q.** That comes up a few times a

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74

75

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2 year it pops up for each judgement?

3 **A. No.**

4 **Q.** How often?

5 **A. Generally, once a year.**

6 **Q.** When Rosewall forwarded the

7 account for Miss Potter and Mr. Morales,

8 did it tell you that it was a judgment

9 account?

10 **A. There were --**

11 **Q.** Or did it tell you to file a

12 rent suit?

13 **A. Again, it does not tell us.**

14 **Basically, we get a list. We go to the**

15 **file, pull out all the documents for that**

16 **particular case, and then at the time it**

17 **would be given to someone in my office who**

18 **would then enter it. We were not given any**

19 **direction by the incline as to, again,**

20 **proceed on a judgment or do a civil case.**

21 **Q.** You make that determination

22 independently?

23 **A. Correct.**

24 **Q.** Initially, you filed a civil

25 suit to collect rent against Miss Potter

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75

G. KAVULICH

and Mr. Morales; correct?

**A. No, not to my recollection, no.**

**Q.** You didn't file a civil collection suit?

**A. No.**

**Q.** Did you file a case in civil court to collect a debt from Mr. Morales and Miss Potter?

**A. That is not my recollection, no.**

**Q.** We will go through the documents in a minute. Let's go back to the amount on Exhibit 1. When Collin directs these post-judgment enforcement mechanisms to be issued -- let's just go through the numbers you testified before. Let's see if it is clear. About how many, just information subpoenas, do you sign during this time period in a day or a week or a month, about how many?

**A. I would say approximately between, information subpoenas only, between 80 a week. It could be anywhere between 70 and 90, but figure about 80**

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76

G. KAVULICH

average?

**A. Over the court of a year.**

**Q.** About 20 a week on average over the course of a year?

**A. Yes.**

**Q.** You sign motions in some of these cases?

**A. Correct.**

**Q.** Roughly speaking, about how many?

**A. Ten to 15.**

**Q.** What other documents do you typically sign on average in a week at your firm?

**A. Demand notices, verifications.**

**Q.** What else?

**A. Notices of trial, notices of issue, notices of entry.**

**Q.** Anything else?

**A. I am sure but none that come to mind.**

**Q.** Roughly on average about how many would you say demand letters would you say?

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78

G. KAVULICH

average.

**Q.** On average about how many information subpoenas would the bank restraint, would you sign per week?

**A. Probably about the same.**

**Q.** About 80 per week?

**A. Approximately, yes.**

**Q.** How many income executions would you sign?

**A. That varies month to month.**

**Q.** What is the typical range?

**A. Fifty a month or 60 a month.**

**Q.** So around 15 a week?

**A. Yes.**

**Q.** Then you signed all of the pleadings that go out from your office; correct?

**A. Ninety-nine percent.**

**Q.** You file collection lawsuits; correct?

**A. Correct.**

**Q.** But how many a week on average?

**A. It varies. About 20.**

**Q.** Is that about an approximate

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77

G. KAVULICH

**A. Demand notices?**

**Q.** What is a demand notice?

**A. Really? You are asking me this question? Before we start a lawsuit, we have to serve a demand notice.**

**Q.** We are taking a deposition.

This could be used at trial or summary judgment. So I have to give questions that I could present to a jury if need be. So you have to send a demand notice or your office sends a demand notice prior to filing a lawsuit?

**A. I do, yes.**

**Q.** Do you also do that prior to issuing post-judgment enforcement mechanisms?

**A. No.**

**Q.** What notice do you sent for post-judgment?

**A. A 5222.**

**Q.** So let's take them one at a time. A demand notice, if you were to sign about 20 complaints, you would sign about, roughly speaking, around 20 demand notices

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79

1 G. KAVULICH  
2 or five a week?  
3 **A. Usually or a few more because**  
4 **some come back no good or with a bad**  
5 **service address.**  
6 **Q.** About 30 or 40 a week?  
7 **A. Thirty.**  
8 **Q.** So a 5222 notice, what do you  
9 mean by 5222?  
10 **A. It is a notice that goes to the**  
11 **judgment debtor before we send out the**  
12 **judgment enforcement devices.**  
13 **Q.** Do you send those out once a  
14 year?  
15 **A. No, only when we do the work.**  
16 **Q.** So if you sign roughly 80  
17 information subpoenas a week, 80  
18 information subpoenas with bank restraints  
19 a week, and 15 wage garnishments a week,  
20 would you sign about 175, 5222 notices a  
21 week or would you sign a little more than  
22 that?  
23 **A. No, it would be whatever we do.**  
24 **If it is 80 bank restraints, then there are**  
25 **80 of those.**

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1 G. KAVULICH  
2 **Q.** Adding up those numbers, this  
3 is roughly, your office sends out about 175  
4 5222 notices a week?  
5 **A. If that's what matches the**  
6 **numbers, yes.**  
7 **Q.** You said verifications. What  
8 do you mean by verifications?  
9 **A. If we receive a dispute from a**  
10 **debtor we send a verification of the debt.**  
11 **Q.** Do you send that both to oral  
12 and written disputes?  
13 **A. Yes.**  
14 **Q.** Approximately how many of those  
15 do you send a week?  
16 **A. One maybe.**  
17 **Q.** You said notices of trial,  
18 approximately how many notices of trial  
19 would you send out and sign in a week?  
20 **A. Two.**  
21 **Q.** You said notices of entry,  
22 about how many notices of entry do you sign  
23 in a week?  
24 **A. Fifteen or 20. It is more than**  
25 **a couple.**

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1 G. KAVULICH  
2 **Q.** On average, would you say 15 a  
3 week would be an reasonable approximation?  
4 **A. Fifteen to 20.**  
5 **Q.** Notices of entry a week?  
6 **A. Yes.**  
7 **Q.** Any other documents other than  
8 those you regularly sign a week?  
9 **A. There may be but those are the**  
10 **ones that come to mind.**  
11 **Q.** But most of the time at your  
12 office, you are not signing a stack of  
13 documents, you are doing other things or  
14 you tell me?  
15 **A. Most of the time, meaning more**  
16 **than 50 percent, yes, I am doing other**  
17 **things.**  
18 **Q.** In a typical week, what do you  
19 do on a typical day?  
20 **A. I open cases, search for new**  
21 **addresses, intra-office meetings, go to**  
22 **clients, go to court, although I try to**  
23 **keep that to a minimum, review lists,**  
24 **trouble-shot problems as they come up,**  
25 **respond or engage in various**

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1 G. KAVULICH  
2 **communications, e-mail, meet with clients,**  
3 **debtors, courts.**  
4 **Q.** Any other major activities that  
5 you do?  
6 **A. That pretty much covers it.**  
7 **Q.** Do you know approximately on  
8 average what percentage of your time you  
9 spend going to court?  
10 **A. Now, 10 percent a year.**  
11 **Q.** Now, you go about 10 percent of  
12 your time a week, on average, you go to  
13 court; correct?  
14 **A. Yes.**  
15 **Q.** And a year ago you were going  
16 approximately how many times per week,  
17 would you go to court?  
18 **A. About a year ago about 25**  
19 **percent. Two years before that it was 40**  
20 **percent. It has been decreasing since the**  
21 **last five years.**  
22 **Q.** Why is that?  
23 **A. Because court is not an**  
24 **efficient use of my time or anyone else's.**  
25 **Q.** So going back to 2015, you said

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1 G. KAVULICH  
2 you spent about 25 percent of your time in  
3 court?  
4 **A. About 25.**  
5 **Q.** Now, opening cases, what do you  
6 mean by opening cases?  
7 **A. Client sends in a case or we go**  
8 **and pick up a case. I review the file. I**  
9 **enter the necessary information into our**  
10 **system and calendar it ahead accordingly.**  
11 **Q.** What percentage of your week do  
12 you spend doing that?  
13 **A. Fifteen percent maybe.**  
14 **Q.** Is that true in 2015?  
15 **A. Yes.**  
16 **Q.** You said you search for new  
17 addresses; correct?  
18 **A. Yes.**  
19 **Q.** Approximately what percentage  
20 of your time do you spend doing that?  
21 **A. That's included in opening**  
22 **cases.**  
23 **Q.** You do intra office meetings,  
24 generally what does that entail?  
25 **A. I would speak to the staff**  
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1 G. KAVULICH  
2 **members about what they are doing and**  
3 **address the issues relevant to their job**  
4 **tasks.**  
5 **Q.** Approximately what percentage  
6 of your week do you spend doing that?  
7 **A. Probably 10 or 15 percent.**  
8 **Q.** Was that true in 2015?  
9 **A. Maybe 10 percent. We were a**  
10 **little bit busier.**  
11 **Q.** You will find out later in the  
12 deposition about why I am asking this  
13 question but around 2008, about what  
14 percentage of your time was used on  
15 intra-office meetings?  
16 **A. Probably the same. I don't**  
17 **know. It is eight years ago.**  
18 **Q.** I am trying to get a rough  
19 estimate. You said going to court was  
20 greater before back in 2008. About what  
21 percentage of your time were you spending  
22 then?  
23 **A. Fifty percent.**  
24 **Q.** Going to client meetings, about  
25 what percentage of your time did you spend  
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1 G. KAVULICH  
2 doing that?  
3 **A. When?**  
4 **Q.** Now.  
5 **A. Ten percent.**  
6 **Q.** What that true in 2015?  
7 **A. Yes.**  
8 **Q.** In 2008, was that roughly true?  
9 **A. It was a lot more. I can't**  
10 **quantify it, but it was a lot more.**  
11 **Q.** You said you review lists, what  
12 do you mean by that?  
13 **A. Review the ticklers.**  
14 **Q.** That is the computer pop-up  
15 that happens on a regular basis, for  
16 example, to collect on judgements?  
17 **A. That is one example, yes.**  
18 **Q.** What are other examples?  
19 **A. If a summons and complaint is**  
20 **due to be issued.**  
21 **Q.** When is that tickler sent out?  
22 **A. Forty days after we issue the**  
23 **demand notice.**  
24 **Q.** What other major lists do you  
25 review?  
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1 G. KAVULICH  
2 **A. If a notice of trial is due.**  
3 **There are not that many. There are not**  
4 **that many job tasks. I should not say job**  
5 **tasks. There are not that many categories.**  
6 **Review a file to see if or to look for a**  
7 **new address. If a summons is due, if a**  
8 **judgment is due, if we you execute on a**  
9 **judgment, if a motion is due, and then a**  
10 **notice of issue or a notice of trial.**  
11 **Q.** So approximately what  
12 percentage of your week is spend doing that  
13 now?  
14 **A. Ten or 15 percent.**  
15 **Q.** Was that true in 2015?  
16 **A. Most likely, yes.**  
17 **Q.** Is that true in 2008?  
18 **A. Yes, probably.**  
19 **Q.** Troubleshoot problems,  
20 approximately how much time do you spend a  
21 week doing that?  
22 **A. Twenty-five percent.**  
23 **Q.** Is that true in 2015  
24 approximately?  
25 **A. Probably.**  
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1 G. KAVULICH  
 2 Q. Approximately speaking, would  
 3 that be true in 2008?  
 4 A. You know, I can't tell you.  
 5 Q. You said responding to  
 6 communications e-mails and so forth from  
 7 consumers and clients, approximately what  
 8 percentage of your time per week do you  
 9 spend doing that?  
 10 A. Ten or 15. Maybe it is a  
 11 little bit more.  
 12 Q. Was that true in 2015, roughly  
 13 speaking?  
 14 A. Most likely, yes.  
 15 Q. And roughly speaking, is that  
 16 true in 2008?  
 17 A. 2008 is a blur. I had just  
 18 opened up my own office in 2007. Shortly  
 19 thereafter I was sued by my old firm, even  
 20 though I didn't do anything wrong. I was  
 21 going through a divorce. It was a crazy  
 22 time.  
 23 Q. So you were just getting  
 24 everything set up back in 2007?  
 25 A. Yes.

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1 G. KAVULICH  
 2 Q. We don't need to go into  
 3 details. I think you testified before your  
 4 old firm was Gutman & Mintz?  
 5 A. Yes.  
 6 Q. They were trying to send a shot  
 7 across the bow so other attorneys would not  
 8 leave?  
 9 A. As well as punishing me.  
 10 Q. And so you wouldn't take away  
 11 clients?  
 12 MR. PASHKIN: Objection to  
 13 relevancy.  
 14 A. I am sure that was part of it.  
 15 Q. Any other reasons?  
 16 MR. PASHKIN: Objection to  
 17 relevance.  
 18 A. No.  
 19 Q. What happened was that suit?  
 20 A. The clients that decided to  
 21 come with me, came with me. The bigger  
 22 issue for me at the time was whether those  
 23 client's cases that had already been placed  
 24 with Gutman Mintz, whether or not they came  
 25 with me or not and they did not. So, in

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1 G. KAVULICH  
 2 other words, client A, if they had started  
 3 a case with Gutman Mintz, they stayed with  
 4 Gutman Mintz. Any new cases that client A  
 5 would place, they would place it with me.  
 6 No monies changed hands. That is how it  
 7 was resolved.  
 8 Q. About how many accounts or  
 9 cases came with you then from Gutman Mintz?  
 10 MR. PASHKIN: Objection to  
 11 relevancy.  
 12 A. Came from Guttman?  
 13 Q. Yes.  
 14 A. I don't know if any. I a  
 15 handful.  
 16 Q. But some of the clients came  
 17 over with you?  
 18 A. Yes.  
 19 Q. Those clients, about how many  
 20 cases did you do with them after they came  
 21 to you?  
 22 MR. PASHKIN: Objection to  
 23 relevancy.  
 24 Q. Were they the major source of  
 25 your cases?

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1 G. KAVULICH  
 2 MR. PASHKIN: Objection.  
 3 A. No.  
 4 Q. Of your week you did doing  
 5 various tasks signing all of the documents  
 6 that we talked about, post-judgment  
 7 enforcement mechanisms demand letters, 5222  
 8 notices, the information subpoenas, wage  
 9 garnishments, and all the other things we  
 10 talked about, so would those, they give  
 11 those to you in a stack and you go through  
 12 them one at a time, you start signing them?  
 13 A. Say that again. My office is  
 14 down. That is taking a little bit of my  
 15 attention away.  
 16 Q. All those documents you signed,  
 17 they give them in a stack to you and you  
 18 just sign them one at a time?  
 19 A. Yes.  
 20 Q. Roughly speaking, you spend  
 21 about an hour a week signing all those  
 22 things or how long?  
 23 A. I don't know how much time it  
 24 is. I don't time it.  
 25 Q. Generally speaking do you

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1 G. KAVULICH  
 2 review any of the information of the  
 3 documents you sign or pretty much just sign  
 4 what is in front of you generally?  
 5 **A. Generally speaking, I sign what**  
 6 **is in front of me.**  
 7 MR. KESHAVERZ: Let's take a  
 8 break now.  
 9 (Whereupon, a short recess was  
 10 taken.)  
 11 **Q.** Going back to Exhibit 1, the  
 12 information subpoena and bank restraint.  
 13 The amounts that are claimed that are due  
 14 are spit out by your computer; is that  
 15 right?  
 16 **A. Correct.**  
 17 **Q.** I want to ask you about, where  
 18 it says on the bottom of the first  
 19 paragraph, I take that back, if you look at  
 20 Exhibit 2, the execution with notice to  
 21 garnishee, what is an execution to  
 22 garnishee?  
 23 **A. That is what we sent to the**  
 24 **marshal.**  
 25 **Q.** The marshal forwards that to  
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1 G. KAVULICH  
 2 the judgement debtor; correct?  
 3 **A. To judgment debtor and I**  
 4 **believe the garnishee.**  
 5 **Q.** Because the marshal is required  
 6 to do that under the CPLR; correct?  
 7 **A. Correct.**  
 8 **Q.** When you sign Exhibit 2 you  
 9 intend that the marshal forward Exhibit 2  
 10 to Mr. Morales; correct?  
 11 **A. Yes.**  
 12 **Q.** Exhibit 1, does that get  
 13 forwarded to the consumer?  
 14 **A. Yes, I believe it does, yes.**  
 15 **Q.** Does it get forwarded by the  
 16 marshal to the consumer?  
 17 **A. By the bank.**  
 18 **Q.** Because the bank is required to  
 19 send a copy of the information subpoena  
 20 with restraint notice to the consumer?  
 21 **A. Yes.**  
 22 **Q.** So when you signed Exhibit 1,  
 23 you knew and intended that Exhibit 1 would  
 24 be forwarded to the consumer by the bank;  
 25 correct?

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1 G. KAVULICH  
 2 **A. Correct.**  
 3 **Q.** Exhibit 2, if you look at it  
 4 that was created by your office; correct?  
 5 **A. Yes.**  
 6 **Q.** If you look underneath the  
 7 addresses, where it says whose last known  
 8 address is, and it has the address, do you  
 9 see that?  
 10 **A. Yes.**  
 11 **Q.** And beneath that it says, in  
 12 the amount of, that is the amount due on  
 13 the judgment?  
 14 **A. Not according to this.**  
 15 **Q.** In what way?  
 16 **A. It says zero is due.**  
 17 **Q.** It says in that sentence, read  
 18 that sentence.  
 19 **A. In the amount of \$4,352.74**  
 20 **including costs of which zero dollars**  
 21 **interest thereon from March 13, 2008**  
 22 **remains due and unpaid. So it says zero is**  
 23 **due on it.**  
 24 **Q.** It says zero is due or zero  
 25 interest is due?  
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1 G. KAVULICH  
 2 **A. It says zero, if you read the**  
 3 **whole sentence remains due and unpaid and**  
 4 **the last number is zero in that line.**  
 5 **Q.** Well, let's move up because it  
 6 says in the amount of, that is continuing a  
 7 few lines up, where it says who are all of  
 8 the parties named in said action judgment,  
 9 was entered on March 13, 2008. Then skip  
 10 down to in the amount of, is that supposed  
 11 to be all part of the same sentence?  
 12 **A. Yes.**  
 13 **Q.** In essence what this is saying  
 14 is there was a judgment entered on March  
 15 13, 2008, in the amount of \$4,352.74?  
 16 **A. Correct.**  
 17 **Q.** Including costs; correct?  
 18 **A. Correct.**  
 19 **Q.** Well, when you read the  
 20 sentence --  
 21 **A. It is a computer error.**  
 22 **Something got screwed up.**  
 23 **Q.** Exhibit 2 is a form generated  
 24 by your office; correct?  
 25 **A. Correct.**

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G. KAVULICH

**Q.** You set up the template for it?

**A.** Correct.

**Q.** Computer just fills in all of the numbers and the names; correct?

**A.** Fills in the variable fields names of the parties, et cetera, yes.

**Q.** Index number, so forth?

**A.** Correct.

**Q.** But the template of the text, other than the specifics of the consumer, that text is established by your office; correct?

**A.** Yes.

**Q.** Are you saying there is some error in how the text is set up for Exhibit 2?

**A.** It is definitely inartfully written.

**Q.** In what way?

**A.** It should say something of the sort in amount of four thousand, a judgement amount including costs and interest of which blank dollars, and fill in the blank, remains due and unpaid.

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96

G. KAVULICH

**Q.** So if you are saying Exhibit 2 has an error in the text, the format of the text, and that is true for 2014 to present; correct?

**A.** I don't know that for sure. I know on this one it is an error.

**Q.** Did you change your template for the execution?

**A.** No.

**Q.** So the error in the text here, would be an error in the text for everything for 2014 forward?

**A.** That is a reasonable assumption but an assumption.

**Q.** Just to be clear, because we talked about data fields, what specifically in the template of the text, not the variables of Mr. Morales, is incorrect or inartful?

**A.** I just told you.

**Q.** That it should say the judgement was entered on a certain date and the next line should be in the amount of; correct?

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98

G. KAVULICH

**Q.** Looking at the execution with notice to garnishee, how much, in reading this document, what do you believe this document says as to how much is due?

**A.** Zero.

**Q.** If the amount of zero was due, why did you sign and send it for execution?

**A.** I made a mistake.

**Q.** Why?

**A.** I don't know why. I don't remember from May or April of 2015.

**Q.** Is the template that is Exhibit 2 the same template you use today?

**A.** I believe so.

**Q.** This is a template you have used for many years?

**A.** Since 2014.

**Q.** So if you believe there is something wrong with the text of the form that has been in error for all the executions with notice to garnishee from 2014 to present; correct?

**A.** I didn't hear a question in there.

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97

G. KAVULICH

**A.** Yes.

**Q.** So, in that sentence it says zero dollars interest thereon, so are you saying zero dollars interest, does that mean how much interest is occurring?

**A.** What is the question? I am saying what?

**Q.** Let me rephrase the question.

**A.** I told you already what I said, what I believe this says. I also told you what I believe that it should say. I don't know what more or less I could add to that.

**Q.** Let me be more specific right now. When it says of which zero dollars interest thereon from a certain date, where it says zero dollars interest, that means there is zero dollars interest accruing; correct?

**A.** The way it is written, yes.

**Q.** So the way it is written, it is saying there is an amount due of \$4,300 but there is no interest accruing on it?

**A.** No, and I answered that question already.

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99

100  
G. KAVULICH

Q. Where it says in the amount of \$4,300, what about that is unclear?

A. I told you already.

MR. PASHKIN: Asked and answered. We keep going around in circles. You are asking him to interpret a document. He has given you his interpretation. The document says what it says.

Q. I am trying to narrow down a specific phrase one at a time.

A. I have already done that.

Q. I am not sure you have. Let's do it and get it out of the way?

A. Let's move on to something else. I have acknowledged this is wrong. I have acknowledged it was inartful. I told you what it should be. And I told you what it says.

Q. Let's break down a specific phrase, where it says there was a judgment entered on the date in the amount of \$4,300?

A. You asked that already, and I

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100

102  
G. KAVULICH

that belongs before that zero, but that's the way I read it, and you may disagree with me, but that's the way I read it.

Q. The clause "interest thereon" should be moved to where?

A. After including costs, with interest thereon.

Q. What about the phrase of which, does that get deleted?

A. That would be after. Interest thereon from the date, the entry date is a clause which should be after the word "costs." That after which should follow of which X amount of dollars remains due and unpaid. This clause simply has to go after costs the way it is presently constructed.

Q. Are you saying that the template that has these phrases, that template should be rearranged?

A. I am saying, yes. I said that already.

Q. You clarified it. Thank you.

Since this FDCPA action has been filed, have you changed the template that is in

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102

101

G. KAVULICH

acknowledged that.

Q. When it says in the amount of \$4,300, this is stating the judgement was \$4,300; is that correct?

A. Correct.

Q. Then it says zero dollars in interest; correct?

A. It says zero dollars interest thereon from March 13, 2008.

Q. Then it says remains due; correct?

A. And unpaid, correct.

Q. So why does that not mean there is an amount of \$4,300 due, no interest and that amount remains due and unpaid?

A. That is not the way I read it. I don't know how many ways you want me to say it. I read it and I am acknowledging it was a mistake. So I don't know really what, I mean we can move on to to more productive things. Forty-three hundred and change is the judgement amount, of which zero remains due and unpaid. The interest thereon from March 13, 2008 is a clause

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101

103

G. KAVULICH

Exhibit 2?

A. No, but I will today or tomorrow when I get back. That being said, I don't know about the other ones, this could be, this is a form but forms get screwed up sometimes too.

Q. But the data inputs I am more interested in. So you are saying on the date of the signature here April 27, 2015 there was zero dollars remaining on the judgement; correct?

A. That is the way I read this.

Q. But putting aside how you read it, let me ask you a factual question, is it the position of your firm and yourself as of April 27, 2015, the judgment was entirely satisfied, is that what you are saying?

A. No. I am saying there wasn't a judgement against Mr. Morales.

Q. You're saying it was a judgment against Clara Potter, not Mr. Morales?

A. In addition to there not being a judgment against Mr. Morales. There was

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103

104

1 G. KAVULICH

2 a judgement against Clara Potter.

3 Q. Was the judgment against Clara

4 Potter due in the amount of \$4,352.74 when

5 you signed this document on or about April

6 27, 2015?

7 A. It was some number less than

8 that because there were payments from an

9 income execution, the exact amount of which

10 I don't know.

11 Q. Was the number zero?

12 A. No.

13 Q. How do you know that?

14 A. From my recollection.

15 MR. KESHAVARZ: Mark this as

16 Plaintiff's 4.

17 (Whereupon, the aforementioned

18 document was marked as Plaintiff's

19 Exhibit 4 for identification as of

20 this date by the Reporter.)

21 Q. I am showing you what has been

22 marked as Plaintiff's 4 and Bates stamped

23 Kavulich parenthesis Morales, 1 through 3

24 from your attorney's office. Can you

25 identify what Exhibit 4?

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104

105

1 G. KAVULICH

2 A. This is our snapshot.

3 Q. It is the collection notes on

4 the punitive judgement account; correct?

5 A. Say that again.

6 Q. Let me rephrase that. Is it

7 your position you and your firm that Mr.

8 Morales owes any amount to Rosewall?

9 A. Mr. Morales owes any money to

10 Rosewall. He did but he does not now

11 because of the stature of limitations. He

12 owed money. It wasn't in a judgment form.

13 But he owed money. Because it was in a

14 judgment form, we did not sue him civilly,

15 to my recollection. And because it was

16 determined subsequently to the expiration

17 of statute of limitations, he didn't owe

18 the money. It is not because there was not

19 an original debt.

20 Q. What is your position about the

21 date the statute of limitations ran as to

22 the punitive debt by Mr. Morales to

23 Rosewall?

24 A. From my recollection, it was,

25 from my recollection in this case, to both

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105

106

1 G. KAVULICH

2 the statute of limitations on contracts in

3 New York State and Mr. Morales' statement

4 he signed the lease, it would be six years

5 from when the debt started accruing.

6 Q. When was that date for Morales?

7 A. I don't remember. Obviously,

8 some time before May of 2008.

9 Q. The statute of limitations

10 began.

11 A. The statute of limitations

12 began running sometime before May of 2008.

13 Q. Does Exhibit 1 indicate,

14 provide information to you to determine

15 when the statute of limitations expired for

16 the alleged debt from Mr. Morales to

17 Rosewall?

18 A. Exhibit 1 is not informative as

19 to that.

20 Q. Exhibit 4?

21 A. It gives me a range, yes.

22 Q. What is that range?

23 A. Sometime after October of 2007.

24 Q. Sometime after October of 2007,

25 six years the statute of limitations began

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106

107

1 G. KAVULICH

2 to start?

3 A. Correct, began to run, yes.

4 Q. Do you or your firm have a

5 document in your possession that would

6 indicate to your firm the date that the

7 statute of limitation would begin and would

8 expire?

9 A. More exactly, yes.

10 Q. What document would have that?

11 A. The lease and the breakdown.

12 Q. The breakdown of what?

13 A. Of the arrears.

14 Q. That breakdown of the arrears

15 is provided to your office by Rosewall;

16 correct?

17 A. Yes.

18 Q. Now, there are some prior

19 depositions you were not here for by

20 Rosewall's corporate representative. Is it

21 your understanding that all of the

22 communications on behalf of Rosewall go

23 through a property management company?

24 A. I can't account for all

25 corporate communications.

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107

108  
G. KAVULICH

Q. All your communications with Rosewall go through a property management company?

A. As far as us, yes.

Q. To your knowledge, you don't know anyone at Rosewall Gardens?

A. Correct.

Q. When you collect on debts that are not a judgment, when you do that, you send out collection letters; correct?

A. Yes.

Q. What other ways do you do that?  
MR. PASHKIN: Objection to relevance.

A. We send a letter. If we, in fact, have a good address for service, we commence a lawsuit.

Q. Now looking at Exhibit 1 going from the bottom, when was the accounts for Miss Potter and Mr. Morales given to you by Rosewall?

A. I have to see Exhibit 4. In or around March of 2008.

Q. You believe that because the

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108

110  
G. KAVULICH

Q. That was primarily what you did there?

A. And collections, yes.

Q. How do you distinguish collections from landlord-tenant?

A. In my world collections are post tenancy. Landlord-tenant would be while the person is actually a tenant.

Q. When you file landlord-tenant action, you are trying to evict the tenants from the property; correct?

A. No. We are trying to collect rent money.

Q. You file a landlord-tenant action to collect rent money?

A. That is the hope.

Q. Are you also trying to get judgement of possession of the property?

A. In the absence of payment, yes.

Q. What is a judgment of possession?

A. It is a judgement which allow the property owner to, along with other things, regain possession of the space.

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110

109

G. KAVULICH

third page of your document production says that?

A. Yes.

Q. You are looking at the bottom line?

A. Yes.

Q. An entry of March 13, 2008?

A. Yes.

Q. Where it says prior judgement for \$300, that is something your staff puts in your computer system based on the documents provided to your office by Rosewall?

A. Yes.

Q. In the prior deposition, I think you testified when you worked at Guttman & Mintz you primarily did landlord-tenant lawsuits, correct?

A. When I worked for Gutman Mintz I wore a number of different hats.

Q. Was there a primary litigation purpose?

A. The firm's primary practice was landlord-tenant.

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109

111

G. KAVULICH

Q. When you say regain possession, do you mean evict tenant that is there or what do you mean by that?

A. That is one of the measures that a landlord could take, yes, based on that judgement of possession.

Q. Is that the primary purpose of getting a judgement of possession?

A. The primary purpose is a step in the procedure.

Q. In order to force a tenant out of a property, you have to get a judgement of possession?

A. Among other things but, you, that is the primary step.

Q. So it is common to file a landlord-tenant action against more than one individual; correct?

A. That is my secondhand experience. I never filed a landlord-tenant action.

Q. When you said you did landlord-tenant work, what did you mean?

A. I would go to court and write

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111

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**stipulations.**

**Q.** So Gutman Mintz, the firm you worked for at the time, would file landlord-tenant lawsuits; correct?

**A.** Yes.

**Q.** You were one of the attorneys at Gutman Mintz; correct?

**A.** Yes.

**Q.** You would go to court because of the lawsuits, landlord-tenant lawsuits your firm filed?

**A.** Yes.

**Q.** So you were involved in the landlord-tenant lawsuits that Gutman Mintz filed?

**A.** Yes, to the extent of, all I did, I would not even know how to file a notice of petition, all I did was go to court and write a stipulation or argue a motion. I never did trials.

**Q.** By stipulation, what do you mean?

**A.** Payment agreements between the parties.

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112

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**Q.** Back in 2008, when this account was given to you by Rosewall, your firm did not charge to see if there was a money judgment entered against all of the defendants; is that true?

**A.** No, my recollection is that the woman who entered, the person who entered the case believed there was a judgement against both.

**Q.** Well, let me ask you this if you know, back in March of 2008 when you got the account for collections from Rosewall, was it your office's procedure to check to see if there was a money judgement against all of the defendants in the landlord-tenant action?

**A.** Yes.

**Q.** In 2008, you knew, you and your firm knew that you would only get a money judgment against consumer in a landlord-tenant action if that consumer actually appeared in court; correct?

**A.** No. First of all, I knew that.

The woman who entered the cases knew that.

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114

113

G. KAVULICH

**Q.** If there is a landlord-tenant suit against multiple tenants or multiple defendants, is it true you can only get a money judgement if that tenant appears on the court date; is that true?

**A.** Nowadays that's true.

**Q.** Is that true as of 2008?

**A.** I can't give you an exact delineation of the time. But I know years ago that that was not the case. Now it is where if you have two tenants, two lease-holders, you are absolutely correct, both tenants have to appear in court. But going back, I don't remember exactly what years but even after this lawsuit, I remember there being cases where it would turn out later, I would get a housing court judgement from a client or we pull it from the file or whatever, and both names would be on it but after engaging in litigation and court appearance and find out only one of those tenants showed up, yes, the clerk entered a judgement again both, a money judgment against both of them.

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113

115

G. KAVULICH

That is one of the reasons we hired her, she had experience on the landlord-tenant side. But back then in 2008, it surely wasn't my understanding that both parties had to appear in order for there to be a judgment, a money judgment in a landlord-tenant action, because that wasn't my experience. That has unfolded and been a court practice later. That being said, a case can be given to us by a client with two people on the lease and one person may leave or somehow remove him or herself from the landlord-tenant relationship. So we still review the file to make sure that both people are actual debtors.

**Q.** When you said the person who enters the information into your computer system, do your records indicate who that was for the Rosewall file regarding Miss Potter or Mr. Morales that you got in March of 2008?

**A.** My records don't necessarily show that definitively. But I know who it was. I forget her last name. Mercedes.

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115

116

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2 **We hired her about January or February of**

3 **that year.**

4 **Q.** January or February of 2008?

5 **A.** Yes.

6 **Q.** Is this from the prior

7 deposition, they are sisters that worked

8 there?

9 **A.** No.

10 **Q.** That a different person?

11 **A.** Those are different people.

12 **Q.** You said Mercedes started

13 working for your firm in January or

14 February of 2008?

15 **A.** Yes.

16 **Q.** When did she cease working for

17 your firm?

18 **A.** March or April or May of 2011.

19 **Q.** What were her primary

20 responsibilities when she worked for you?

21 **A.** Her primary, first and foremost

22 responsibility was entering the cases.

23 **Q.** What do you mean by entering

24 the cases?

25 **A.** I would get the file from the

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116

117

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2 **client or some other way in the mail or**

3 **however it would come to me. Then I would**

4 **give it to her to enter the name of the**

5 **parties and how much was owed.**

6 **Q.** So she would be the person who

7 would determine whether it was a debt for

8 rent that you had to file a civil suit for,

9 as opposed to judgment enforcement?

10 **A.** Generally, yes.

11 **Q.** She would make that decision?

12 **A.** Yes.

13 **Q.** You would not tell her which

14 one it is?

15 **A.** No, especially me at this time.

16 **Q.** Why do you say that?

17 **A.** Because I was only open less

18 than a year and I was trying to build a

19 business and I was wearing many more hats

20 than I do now.

21 **Q.** Would it be fair to say when

22 you first opened your practice in 2008,

23 your office was just starting up and was in

24 a jumble?

25 **A.** No. I am saying up until

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117

118

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2 **about, until I hired her, I used to enter**

3 **the cases. And I just decided we were very**

4 **busy and people's responsibilities were**

5 **stretched.**

6 **Q.** What qualifications did

7 Mercedes have when she began to work for

8 you?

9 **A.** She was the legal point person

10 **for a large housing company.**

11 **Q.** Which one?

12 **A.** Sepco Development in the Bronx.

13 **Q.** Is that a property management

14 company?

15 **A.** Yes.

16 **Q.** Do you know how long she worked

17 there before you hired her?

18 **A.** I don't know exactly, but for a

19 long time.

20 **Q.** Do you know about how old she

21 was when she started working for you? Was

22 she out of high school, in her 20s or 40s?

23 **A.** I know she had at the time a

24 high school age daughter.

25 **Q.** Do you know if she graduated

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118

119

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2 from high school?

3 **A.** Do I know whether she graduated

4 **from high school? No.**

5 **Q.** What training did Mercedes have

6 to determine whether a case should be

7 entered for collection and rent as opposed

8 to enforcement of the judgement?

9 **A.** Years.

10 **Q.** What experience?

11 **A.** Years, this housing company, I

12 don't know then it might have been

13 twenty-five hundred, but somewhere between

14 twenty-five hundred and three thousand

15 apartments were under their management. It

16 is Father Gigante in the Bronx. He worked

17 there for many years, and she was their

18 liaison with their landlord-tenant counsel.

19 She would put cases into legal follow-up

20 and deal with all the legal aspects of the

21 case.

22 **Q.** Is she an attorney?

23 **A.** No.

24 **Q.** Did she have any formal

25 training or legal training?

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119

120

1 G. KAVULICH

2 **A. I don't know.**

3 **Q.** Did she have any legal

4 training?

5 **A. I don't know. What do you mean**

6 **by legal training?**

7 **Q.** I don't know. Was she doing

8 the activities of an attorney?

9 **A. No, she would not make court**

10 **appearance or sign papers.**

11 **Q.** She would make decisions about

12 what an attorney would make decisions on

13 about whether or not to file a collection

14 lawsuit or expedite judgment?

15 **A. She would determine whether a**

16 **judgement exists or not, yes.**

17 **Q.** But you didn't direct her to

18 determine whether there was a possessory

19 order or a money judgement in a

20 landlord-tenant action; is that correct?

21 **A. Possessory orders were**

22 **generally, actually I can't right now, I**

23 **will reserve the possibility were relevant**

24 **to what we did or what we do because all**

25 **our cases were after folks moved out or**

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121

1 G. KAVULICH

2 **were evicted.**

3 **Q.** Let me make sure I understand.

4 A landlord-tenant action would be filed and

5 one reason would be to collect rent;

6 correct?

7 **A. Yes.**

8 **Q.** And another reason would be to

9 get a possessory judgement so that you

10 could begin the process of evicting that

11 tenant from the property; correct?

12 **A. Yes, but to make clear, my firm**

13 **nor I do this work, nor did we do this work**

14 **in 2008.**

15 **Q.** You didn't do landlord-tenant

16 work?

17 **A. Correct.**

18 **Q.** At Gutman Mintz you appeared at

19 hearing on landlord-tenant cases filed by

20 Gutman Mintz; correct?

21 **A. Yes.**

22 **Q.** You are saying you don't know

23 so --

24 **A. My simple point is possessory**

25 **judgments don't come into collections,**

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122

1 G. KAVULICH

2 **aren't really relevant to collection**

3 **actions to the extent that the collection**

4 **actions that we engage in and engaged in**

5 **2008 were all post possession cases,**

6 **meaning that the tenants/debtors/defendants**

7 **were no longer residents in those**

8 **apartments.**

9 **Q.** And that could only happen if

10 you have a possessory judgement?

11 **A. Unless they left voluntarily,**

12 **you cannot evict someone without a**

13 **possessory judgment, yes.**

14 **Q.** You are saying all the cases

15 you got at that point the tenant had

16 already moved out?

17 **A. Either moved out or was**

18 **evicted, yes.**

19 **Q.** So when you got an account that

20 was after landlord-tenant action was

21 completed, you would not take any steps to

22 determine whether there was only a

23 possessory judgement or if there was also a

24 money judgment; is that true?

25 **A. The inquiry, again, I will**

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123

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2 **reserve for a metaphysical possibility, but**

3 **I cannot imagine where a possessory**

4 **judgment would be relevant. We would look**

5 **to see if there was a money judgement, but**

6 **not a possessory judgement.**

7 **Q.** But it is not uncommon; correct

8 me if I am wrong, it is not uncommon for a

9 multiple defendant landlord-tenant action

10 to have a money judgment against one of the

11 tenants and not a money against the other

12 tenant, because the other tenant didn't

13 show up in court?

14 **A. Now that is common.**

15 **Q.** In 2008 was that common?

16 **A. To my knowledge, no, because**

17 **they, whatever or whenever the exact**

18 **delineation was, I don't know whether they**

19 **changed the law or maybe now they started**

20 **paying attention, I am speaking about the**

21 **clerks in the court, now they started**

22 **paying attention to it. Because back then**

23 **you could have a money judgment against two**

24 **tenants although only one appeared, a money**

25 **judgement. Now that, I haven't seen that**

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1 G. KAVULICH  
2 in a few years.  
3 Q. Let me ask you this: When you  
4 got the account for Miss Potter and Mr.  
5 Morales since it was after a  
6 landlord-tenant action, did your firm  
7 assume that there was a judgement against  
8 both of the debtors?  
9 A. No, we would not assume, no.  
10 Q. You would check to see if there  
11 was an actual judgment against each of  
12 them?  
13 A. Correct.  
14 Q. Would you request, obtain a  
15 copy of the physical judgement against each  
16 of the debtors, would you request that from  
17 your client when you got the account?  
18 A. This particular client it would  
19 be in there or there would be a notation in  
20 there that there was.  
21 Q. My question is more general.  
22 Do you insist on seeing a copy of the money  
23 judgement against each of the defendants  
24 when you get a case post landlord-tenant?  
25 A. Yes, we want to see it, sure.

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2 Q. Did you insist on getting a  
3 physical copy of that money judgment prior  
4 to you attempting to collect on the debt?  
5 A. I assuming, first of all, I  
6 don't remember 2008. I am assuming  
7 Mercedes would have reached out or looked  
8 at whatever was there, if she thought there  
9 was one there.  
10 Q. My question is broader: Did  
11 your office require the client to provide  
12 you a copy of a money judgement for  
13 accounts that were given to you after a  
14 landlord-tenant action?  
15 A. No, because sometimes we would  
16 go look. If the information wasn't in the  
17 file, we would send someone to housing  
18 court and check in the housing court  
19 computer.  
20 Q. Would the housing court, do you  
21 know if that happened in this case?  
22 A. I don't think so. I believe  
23 what happened, I am not sure, but I believe  
24 what happened was Mercedes just misread the  
25 documents.

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1 G. KAVULICH  
2 Q. But based on your own office's  
3 records in this case, is there any evidence  
4 that your office had possession of the  
5 judgements in the landlord-tenant case  
6 against Miss Potter or Mr. Morales, either  
7 possessory judgement or money judgement?  
8 A. I just told you usually we  
9 require, if the client does not provide it  
10 to us, we look for it in court. What I  
11 believe, I just answered this, but what I  
12 believe happened is she misread what we  
13 had. Do I know for sure? No.  
14 Q. You would generally have  
15 someone from your office check the court's  
16 website or would you have your staff go to  
17 the physical courthouse and check the  
18 computers there?  
19 A. E-courts is useless. E-courts  
20 isn't applicable when it is a housing court  
21 index number. Once the case is over you  
22 can't find them. So we use to send a guy  
23 down to various housing courts and look in  
24 their housing court system computer.  
25 Q. But your staff generally would

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2 not pull the actual file, they would look  
3 at what the computer screen said?  
4 A. When the files were available  
5 they would get copies, sure.  
6 Q. When was the landlord-tenant  
7 action completed as to Miss Potter and Mr.  
8 Morales?  
9 A. In 2008, I believe.  
10 Q. Why do you think that?  
11 A. Because that's when they  
12 vacated.  
13 Q. That's when the vacated the  
14 premises?  
15 A. Yes.  
16 Q. How do you know that?  
17 A. By my notes, the system notes.  
18 Q. Do you know when your office  
19 obtained, if ever, a copy of the money  
20 judgment against Miss Potter?  
21 A. No.  
22 Q. Is there anything in your  
23 records that would indicate when that was  
24 received?  
25 A. When that was received?

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128  
G. KAVULICH

Q. The money judgment against Miss Potter?

A. Apparently when we opened the case, when the case was opened.

Q. What makes you say that?

A. Because it says prior judgment.

Q. Where does it say that?

A. Bottom of page three.

Q. On March 13, 2008; correct?

A. Correct.

Q. You don't know from that entry whether you had possession of the money judgement against Miss Potter, do you know?

A. No, I do not know.

Q. So there is no evidence in your own records that indicate when, if ever, you had a copy of the money judgment against Miss Potter; correct?

A. No, in the records there may be but I don't have them all in front of me.

Q. Well, I can show you the documents. Is there anything in your documents production that show if your office ever received the money judgment

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128

130  
G. KAVULICH

it, but I subsequently found out that the guy that used to scan our stuff used to intentionally scan, after I fired him, used to intentionally scan one person's documents into another person's file. He is since dead. But I can't say nobody would take it out and intentionally destroy it. But that being said, who knows what file it is in or if it is in a file or maybe it just fell out, sixty pages or a hundred pages we took and we copied from the client file and it got lost. But my notes, my contemporaneous notes at the time I picked up the file indicates that we did have it by handwriting saying FJ attached. FJ in my lingo means money judgment. I have no need to know about a possessor judgement for our purposes.

Q. A final judgement attached to what?

A. To the rest of the documents.

Q. There is that notation but you don't have possession of the document?

A. It is not included in this pile

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130

129

G. KAVULICH

against Miss Potter?

A. Yes, it looks like when I picked up the case there was one because it says "FJ attached."

Q. FJ means?

A. Final judgment.

Q. Final judgment could be a possessory judgement?

A. Not in my lingo. I don't see the judgement. I see the stipulation from the court, but I didn't see the judgement.

Q. So you are saying your office never had possession of a money judgment against Miss Potter?

A. No, now I am definitely not saying that. Now, I am saying we did.

Q. Correct me if I am wrong. Do you have a copy of the money judgment against Miss Potter in your document production?

A. In here, no, but we did at some point. At least when we opened the case.

Q. Would it have been destroyed?

A. I can't say what happened to

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129

131

G. KAVULICH

of papers; correct.

Q. Any documents regarding the account the judgement Miss Potter, Mr. Morales you would have provided in your possession, you would have provided to your attorney?

A. Yes.

Q. And your attorney would have provided them to my office in this case?

A. Yes, I believe that, yes.

Q. To your knowledge, there isn't any documents being withheld?

A. No, if I had it, I would show it to you.

Q. If you had a monetary judgement against Miss Potter in your custody and control, it would be in your document production in this case?

A. Correct.

MR. KESHAVARZ: Please mark this as Plaintiff's 5 for identification.

(Whereupon, the aforementioned document was marked as Plaintiff's

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131

G. KAVULICH

Exhibit 5 for identification as of  
this date by the Reporter.)

**Q.** I am showing you what has been  
marked as Plaintiff's 5. Can you identify  
what that document is?

**A.** It is a summons, complaint.

**Q.** Did your office file a summons  
and complaint against Miss Potter and Mr.  
Morales on or about July 1, 2008?

**A.** It appears so.

**Q.** It is a summons and complaint  
to collect on rent to be owed by them?

**A.** Correct. Now it is kind of  
screwy, right? See, because we  
discontinued this -- I didn't remember  
this. After looking at this -- I don't  
remember, I don't remember actually which  
one, I saw it said something about a  
discontinuance or something. We should  
have kept this case going. We should have  
kept this case going against James Morales  
because he owed the money. But we  
discontinued it because of the judgment.  
We discontinued it because somebody said

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132

G. KAVULICH

**was not paid in full. I think it is not  
paid in full.**

**Q.** How much is left?

**A.** I don't know; you have to ask  
the marshal.

**Q.** You collect on a debt and you  
don't know how much is owed on that debt?

**A.** No, you are mischaracterizing  
what I said. I said, like you mentioned  
before, I don't remember what we were  
referring to, but don't trust your math,  
was what you said. I am not good at math  
either. So I am not going to tell you they  
owe \$5,226.22 as of yesterday. I am saying  
that a non-math expert, fairly intelligent  
guy, not the brightest guy in the bunch,  
but fairly intelligent, can look at a  
judgment from 2007 that's been paid off  
slowly, that there is a good likelihood  
there is still interest owed, that is what  
I am saying.

**Q.** Let me ask you a specific  
question. You have in front of you all of  
your documents in your possession custody

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134

G. KAVULICH

**there was a judgment against both people.  
We screwed ourselves and our client because  
your client got away with owing the money.**

**Q.** You collected the full amount  
of the money from Miss Potter?

**A.** I don't think we collected the  
full amount. I guess we did ultimately.

**Q.** You are looking at Plaintiff's  
2; correct?

**A.** Yes.

**Q.** You are looking at?

**A.** I am looking at Plaintiff's 4.

**Q.** What about Plaintiff's 4  
demonstrates to you that the full debt to  
Rosewall, by Miss Potter and/or Mr. Morales  
apparently was entirely satisfied?

**A.** I don't know if it is entirely  
satisfied because I see the judgement is  
for \$4,352.74. So the amount collected  
\$4,505.47.

**Q.** So you collected more than the  
amount of the judgement?

**A.** I don't know that all of the  
interest that would have accrued on this

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133

G. KAVULICH

and control against Morales, Miss Potter,  
the accounts of the judgement, you have  
that in front of you right now; correct?

**A.** Correct.

**Q.** Is there anything in your  
records that indicates to you how much, if  
anything, is owed on the judgement?

**A.** There is still interest owed.  
Can I tell you exactly how much? No, I  
can't. Once we do a property execution or  
an income execution we rely on the marshal  
to determine because poundage is also  
involved once an account goes to a marshal,  
and I rely on what their calculations are.

**Q.** I am not talking about  
poundage. I am talking about the interest.

**A.** But poundage affects the  
interest, poundage affects the debt; right.

**Q.** When you get an account to  
collect on a judgement, do you ever put on  
a document that is sent to a consumer what  
the current balance is on the judgement?

**A.** No. When we get the case, we  
say the judgement plus interest from when

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135

G. KAVULICH

it was due.

**Q.** You noted before that there is a tickler that comes up on all five thousand judgments your office has to determine what steps to take about executing on that judgment; correct?

**A.** No, it just tells us that it is time to execute on the judgement.

**Q.** So this pops up, and this non-attorney in Laos, Collin, now in Laos, looks at the screen and determines whether to issue a post-judgment enforcement mechanism; correct?

**A.** Yes.

**Q.** He determines that without noting what the balance is due on that account; correct?

**A.** No, that is not true.

**Q.** So this judgment account against Miss Potter pops up on your computer screen, is there any way to determine how much is due on the judgement, if any?

**A.** If you sat down, did the

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136

G. KAVULICH

**A.** Well, hold on.

**Q.** Let me look at it on my screen while you look at it on the document. Let me catch up with you, please. So look at Exhibit 1, the information subpoena and restraining notice issued by your office and signed on March 18, 2015. What does this document say the balance due on the judgment is?

**A.** It says how much, it says **\$4,352.74 together with interest thereon from the date of entry of the judgement, remains due and unpaid.**

**Q.** This is, in your view says that there's --

**A.** That this was still \$4,352.74.

**Q.** Left on the judgement?

**A.** Correct.

**Q.** That was not true?

**A.** Correct.

**Q.** Your office did not know what the current balance was actually due on March 18, 2015 when you signed this document?

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138

G. KAVULICH

calculations but additionally we also know whether or not there is money due or not by how the marshal returns the file to us. If we were doing an income execution, for instance, the marshal gets the money from the employer, right or from the debtor, I guess, for the first stage and they will tell us whether or not it is satisfied. And sometimes it will come back that the person became separated from their employment and they could not pursue the garnishment anymore and they will say it is partially satisfied.

**Q.** Let me direct your attention to Exhibit 1, this is the information subpoena and a restraining notice, this document, if you can read from where it says at the bottom of the first paragraph where it says "in total?"

**A.** Before "in total?"

**Q.** From there to the end?

**A.** Unlike the property execution, I think that verbiage is more correct.

**Q.** Well, different.

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137

G. KAVULICH

**A.** They neglected to ask the marshal, yes.

**Q.** They neglected to ask the marshal how much was due on the judgement?

**A.** Correct because they had been collecting on the income execution on Miss Potter.

**Q.** Well, sometimes your office uses more than one marshal to collect on a judgement; correct?

**A.** If we did, it was a mistake. Because we are supposed to, and I can't point to, I can't think of any. But if we are using one marshal, if you have two debtors, you want to use the same marshal.

**Q.** Why?

**A.** So you can keep track of things like this.

**Q.** Does your office --

**A.** We would never purposely send a judgement, an execution, sorry, to a marshal, using this instance, purposely send an execution on James Morales to marshal A and send an execution on Miss

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139

140

1 G. KAVULICH

2 **Potter to marshal B, it does not make any**

3 **sense.**

4 **Q.** Why would you not do that?

5 **A.** Because they can keep track of

6 **the numbers.**

7 **Q.** If you were to send the account

8 from Miss Potter to one marshal to collect

9 and you sent the account to a different

10 marshal to collect, the amounts each

11 marshal thought were due on the judgment or

12 the punitive judgment would be

13 inconsistent; is that you are saying?

14 **A.** I am saying there is a greater

15 **chance of that happening. No, I am not**

16 **saying, again, the amount of the judgment**

17 **goes down. Use this, for example, the**

18 **amount of the judgment on Potter, the**

19 **amount of monies received from Potter pays**

20 **down the judgement. If there was a**

21 **judgment against Mr. Morales and say we**

22 **were garnishing him, it would be easier to**

23 **keep track of that to have it with the same**

24 **person.**

25 **Q.** Putting aside whether there was

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140

141

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2 one or two judgment debtors or punitive

3 judgment debtors on an index number,

4 generally does your office use more than

5 one marshal?

6 **A.** We use two marshals.

7 **Q.** Which two?

8 **A.** Steven Bigel and Ronald Moses.

9 **Q.** Would there be a particular

10 reason why you would send a punitive

11 judgment account to one marshal as opposed

12 to the other?

13 **A.** No.

14 **Q.** If it is an old judgement.

15 **A.** No, I mean, even if it an old

16 **judgment, when I first left Gutman & Mintz,**

17 **Ronald Moses was the marshal there. And**

18 **because of how that all happened when I**

19 **left, I didn't know if I could trust him.**

20 **And I think I was paranoid about that. Not**

21 **paranoid clinically, but concerned about**

22 **that. So I tried using, I don't know**

23 **another marshal in Queens, Beinstock. And**

24 **I just didn't like the way they treated my**

25 **staff. Then we started using marshal**

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141

142

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2 **Bigel. Then I was afraid of having all my**

3 **eggs in one basket. Not they did anything**

4 **bad, they were very nice people. But by**

5 **that time, I guess, my non-clinical**

6 **paranoia had worn off and Ronnie was**

7 **reaching out to me, he wanted work. I had**

8 **a relationship with him. So he gets a**

9 **small, he does not get at much as marshal**

10 **Bigel.**

11 **Q.** When you say Ronnie?

12 **A.** Ronald Moses.

13 **Q.** When did you start using

14 marshal Bigel?

15 **A.** 2009 maybe or 2010. I don't

16 **remember exactly.**

17 **Q.** For a period of time you would

18 use only marshal Bigel?

19 **A.** Well, other than the cases that

20 we had already placed with marshal

21 Bienstock.

22 **Q.** For what period of time did you

23 use only marshal Bienstock?

24 **A.** Well, from like 2007, the end

25 **of 2007 until probably 2009. We probably**

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142

143

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2 **started using Bigel in 2009, I would think.**

3 **Q.** So if there are any accounts on

4 this punitive judgment, this index number

5 that would be with marshal Bienstock?

6 **A.** Depending on when we executed

7 on it.

8 **Q.** A couple of minutes ago you

9 said, if I understand correctly, marshal

10 Moses, worked for Gutman & Mintz, what did

11 you mean by that?

12 **A.** He did their work. He did

13 **their income executions and property**

14 **executions as of when I left.**

15 **Q.** As of the date when you left in

16 about 2007, Gutman Mintz used marshal Moses

17 for all of their post-judgment collection

18 activities?

19 **A.** Yes, most of it, yes. If it

20 was upstate someone else.

21 **Q.** Upstate they would use someone

22 else?

23 **A.** Yes.

24 **Q.** But most of their work was in

25 New York City?

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143

144

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2 **A. Yes.**

3 **Q.** So you were afraid maybe

4 initially that maybe marshal Moses would

5 what?

6 **A. Give them information. You**

7 **know, the wounds were raw. They sued me.**

8 **I didn't have a lot of money. Times were**

9 **tight. I had worked there for a long time.**

10 **I mean on a business level, I sort of**

11 **understood what they did, but personally I**

12 **was friends with a few of them and I had**

13 **been there with them through hard times to**

14 **get treated like that.**

15 **Q.** Is there anything in your

16 system at your office that would make sure

17 that a judgment account, even with multiple

18 debtors, would stay with one marshal the

19 entire time for collections?

20 **A. Would the system, like, in**

21 **other words, when we get a dispute letter,**

22 **we click off the thing, we went over this**

23 **last time, it will prevent the summons from**

24 **going. Is that what you mean?**

25 **Q.** Plaintiff's 1 is that the index

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144

145

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2 in the landlord-tenant action or the index

3 in the civil court action?

4 **A. The housing court.**

5 **Q.** So the index, the money

6 judgment entered against Miss Potter was in

7 the landlord index?

8 **A. Yes.**

9 **Q.** So there was one judgement

10 index number for both Potter and Morales?

11 **A. There was one housing court**

12 **case against, brought against them, yes.**

13 **There was a housing court case brought**

14 **again both persons under one index number,**

15 **yes.**

16 **Q.** So in this case, you used one

17 marshal to collect against Miss Potter and

18 a different marshal to try to collect

19 against Mr. Morales; is that true?

20 **A. No. It doesn't say on here.**

21 **Q.** In that Exhibit 4?

22 **A. Yes. I am assuming it was**

23 **Bigel.**

24 **Q.** Why do you assume that?

25 **A. Because we used them again for**

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145

146

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2 **the property execution, we started**

3 **collecting in 2009.**

4 **Q.** Let me go back to Exhibit 1

5 again for a second, the information

6 subpoena with bank restraint. So the basic

7 template that's Exhibit 1, most of that

8 test is because the statute requires this

9 language; right?

10 **A. Yes.**

11 **Q.** Is the template for Exhibit 1

12 the same template that you have used since

13 you opened your office?

14 **A. Well, with some changes.**

15 **Q.** Some changes in what way?

16 **A. I know when we first opened,**

17 **that there wasn't this language about**

18 **restraining the exempt monies, don't**

19 **restrain if there are exempt monies.**

20 **Q.** You are looking at the bottom

21 of the page?

22 **A. Yes. Also on the bottom of the**

23 **page response only required if judgment**

24 **debtors have ever had a relationship with**

25 **your institution.**

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146

147

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2 **Q.** That is also on the bottom of

3 Exhibit 1?

4 **A. Yes.**

5 **Q.** Other than those two changes?

6 **A. I don't recall, but I don't**

7 **think it has been changed much.**

8 **Q.** So the question is clear. To

9 your recollection, you don't think there

10 are any changes in Exhibit 1, in the

11 template that is Exhibit 1 from the time

12 you opened your office until now; is that a

13 fair statement?

14 **A. I don't think so.**

15 **Q.** You don't think is it a fair

16 statement?

17 **A. I don't think we made any**

18 **changes.**

19 **Q.** You are saying, and correct me

20 if I am wrong, you rely on the marshal to

21 tell your office the balance due on a

22 judgement; correct?

23 **A. When there an is execution**

24 **involved, yes.**

25 **Q.** By an execution, you mean a

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147

148

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2 bank restraint or a wage garnishment?

3 **A. Or a property execution.**

4 **Q.** So every time you would use an

5 information subpoena with a bank restraint

6 like Exhibit 1, you would only put the

7 amount of the judgement as the amount

8 claimed to be due; correct?

9 **A. Less the payments, the system**

10 **is supposed to pick that up.**

11 **Q.** Let me ask you this: Let's

12 look at Exhibit 1. Let me ask you a

13 specific sentence. It says a judgement

14 which was entered on March 13, 2008, and it

15 goes on to identify the parties. It says

16 that judgement of March 2013 in the total

17 amount of an amount of money, am I reading

18 that correctly?

19 **A. Yes.**

20 **Q.** Of which that same amount of

21 money which is \$4,352.74, that is the

22 amount that remains due and unpaid?

23 **A. It should be yes, and, it**

24 **didn't here; correct.**

25 **Q.** It is the amount due and unpaid

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149

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2 as of the date of your signature March 18,

3 2015?

4 **A. Correct.**

5 **Q.** When you issue the bank

6 restraint, you fill that out and you send

7 it to the marshal; correct?

8 **A. The property execution, yes.**

9 **Q.** And the information restraint,

10 who do you sent that to?

11 **A. To the bank.**

12 **Q.** Exhibit 1 goes to the bank?

13 **A. Yes.**

14 **Q.** And Exhibit 1 gets forwarded

15 from the bank to the consumer?

16 **A. Correct.**

17 **Q.** As of the date, there the

18 restraint is sent your communication with

19 the consumer says that the amount that is

20 due and unpaid, is actually the amount of

21 the judgment itself?

22 **A. Yes.**

23 **Q.** So the bank restraints that you

24 have the bank send to the consumer, that

25 doesn't credit any payments; is that

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150

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2 correct?

3 **A. It didn't correct.**

4 **Q.** The form you use for the

5 restraining notice from 2007 until the

6 present time when it says that an amount is

7 due and unpaid it only uses the judgement

8 amount; correct?

9 **A. It did in 2015, yes.**

10 **Q.** And it did from 2007 until the

11 present; correct?

12 **A. No, now it is in the process of**

13 **being changed.**

14 **Q.** After this lawsuit?

15 **A. It started around the same time**

16 **but not because of this.**

17 **Q.** So from 2007 until the about

18 the time of this FDPCA lawsuit when you

19 sent out a bank restraint knowing that the

20 bank would send that to the consumer, when

21 it says in the amount that remains due and

22 unpaid, that amount is always the amount of

23 the judgement itself; correct?

24 **A. Say that again.**

25 **Q.** Before you changed your policy,

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151

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2 I am talking about the period before you

3 started changing your policy after this

4 lawsuit, from when you opened your office

5 in 2007 up until the, around the time the

6 FDPCA lawsuit was filed, when you filled in

7 the restraining notice amount and it says

8 the amount that remains due and unpaid, you

9 would always fill in the amount of the

10 judgment; correct?

11 **A. Yes, the computer did. We**

12 **didn't fill it in.**

13 **Q.** The computer filled it in?

14 **A. It is not like somebody sat**

15 **there and typed in the numbers.**

16 **Q.** Because the numbers, for all

17 these documents, the bank restraints and so

18 forth, they are all automatically spit out

19 by the computer?

20 **A. Yes.**

21 **Q.** So for the restraints, when it

22 is, I just want to be clear, I apologize if

23 you answered this, I am not sure this is

24 the question, for 2007 until the day of the

25 suit, when the restraining notice was sent

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2 out when they say the balance remains due  
3 and unpaid, you would only use the judgment  
4 amount to fill it in?  
5 **A. It is a little bit before the**  
6 **suit but, yes.**  
7 **Q.** So the amount due and unpaid  
8 when you sent out the restraining notice,  
9 your office does not, in fact, know if  
10 there anything that is due and unpaid for  
11 judgment; is that true?  
12 **A. No, because if there are no**  
13 **monies due, the file would be closed.**  
14 **Q.** Except here?  
15 **A. No, that is not true. There**  
16 **was still money owed by Miss Potter. They**  
17 **were mistakenly believed by human error to**  
18 **be owned Mr. Morales.**  
19 **Q.** Let me rephrase the question.  
20 When the computer spits out the amounts  
21 remaining, that remains due and unpaid, it  
22 would give the amount of the judgement and  
23 it would not credit any payments that were  
24 made on the judgement?  
25 **A. Correct.**

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2 would be reflected where it says an amount  
3 remains due and unpaid?  
4 **A. We had asked our IT people, but**  
5 **they said it was really difficult and it**  
6 **would have been more expensive.**  
7 **Q.** How much more expensive?  
8 **A. I don't remember, but there**  
9 **wasn't much money left. So it didn't**  
10 **matter as far as budgeting for IT.**  
11 **Q.** What was your budget for IT?  
12 **A. What we could afford.**  
13 **Q.** Roughly speaking.  
14 **A. Look, I am a small operation.**  
15 **I don't have work charts and things like**  
16 **that. It was, can we print the summons.**  
17 **Can we do this and that.**  
18 **Q.** I am trying to figure out why  
19 it would be difficult to calculate that?  
20 **A. I agree with you. That was my**  
21 **question. I don't know. I got "because of**  
22 **this and that." I had the same question,**  
23 **but then again I am not a computer person.**  
24 **I am not a math person. We don't collect**  
25 **more than what is owed so.**

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1 G. KAVULICH  
2 **Q.** Why not?  
3 **A. Oversight.**  
4 **Q.** Because when you issued the  
5 bank restraints your office, in fact, does  
6 not know the amount that is due on the  
7 judgment on the date that you use issue the  
8 bank restraint; is that true?  
9 **A. Depending on the circumstances,**  
10 **it could be true.**  
11 **Q.** Generally that's true; correct?  
12 **A. Again, depending on the**  
13 **circumstances, it could be true. Sometimes**  
14 **it is not. If there were never any monies**  
15 **corrected, then it would be the judgment**  
16 **amount plus the interest.**  
17 **Q.** So if any amount was actually  
18 collected on the judgement, those payments  
19 would not be reflected in the amount  
20 claimed to be due for the restraining  
21 notices, such as Exhibit 1 you sent to the  
22 consumer; correct?  
23 **A. Correct.**  
24 **Q.** Why did you not set up your  
25 system so that the current balance due

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2 **Q.** But you ask for more than what  
3 is owed if there is a payment, you ask for  
4 more than that what is owed?  
5 **A. This document says, for**  
6 **instance, when we talk to people and we are**  
7 **looking at a computer screen and we see**  
8 **payments, we don't ask for more than that.**  
9 **Q.** So a consumer calls and you  
10 have been garnishing an amount on their  
11 wages, and taking from their bank account,  
12 and they are saying I feel like I have been  
13 paying forever, how much do I owe?  
14 **A. It happened to me yesterday.**  
15 **Q.** You say what?  
16 **A. I say that I need to check with**  
17 **the marshal. I will call you back.**  
18 **Because usually they don't call out of the**  
19 **blue. They call because there is some**  
20 **other reason involved. Yesterday the lady**  
21 **was being garnished by us twice. I guess,**  
22 **she was getting paid biweekly, and it was**  
23 **too much for her. So she started off with**  
24 **what you just brought us and then the next**  
25 **thing was, can I just pay once, you know,**

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**can they garnish once.**

**Q.** So when the information, so if when you sent the bank restraint to the bank and it forwards it to the consumer, the form letters that the bank sends or do you know says contact the judgment creditor's attorney to figure out what was going on, that is one of the things it says in the form letter?

**A.** You know, I don't know if it was Monday or Tuesday was the first time I had ever seen what they actually, I know that they convey this information, how they convey it, I never knew. But, again, you know, I don't even remember, it sort of looked like this but it wasn't --

**Q.** Exhibit 2?

**A.** Yes, it wasn't an execution. But the layout, the layout of the page, but that was the first time I have ever seen what they send to the judgment debtor. So I don't know exactly.

**Q.** So what you did see was the cover letter to the judgment debtor that

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minor tweaking; is that right?

**A.** I would not think so.

**Q.** You would not think there were substantive changes?

**A.** I don't think so.

**Q.** So then how do you put in, there is a date remains unpaid in the amount of \$4,352.74, that's an amount that is greater than the judgement for this index number; correct?

**A.** Yes, \$4,352.74, that's right.

**Q.** Where it says with zero dollar interest, we talked about that, I am not trying to restate all that, with zero dollars interest thereon, where does that number come from, that gets put before the word interest?

**A.** That is supposed to be the balance.

**Q.** But correct me if I am wrong, your office does not know, when it generates an execution with notice to garnishee, what the balance on the judgement account is?

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says in one part, if you have any questions contact the attorney for the judgment debtor; is that true or something along those lines?

**A.** It probably did.

**Q.** And that looked like a form letter that the bank would send out?

**A.** I would think so. I don't know.

**Q.** Let's go back to Exhibit 2. The information that is Exhibit 2, the execution with notice to garnishee; that is a document that is generated from your office; correct?

**A.** Yes.

**Q.** It is a document that is signed by you?

**A.** Yes.

**Q.** This is the same template you have used from 2007 until the present; is that correct?

**A.** Yes, probably with some minor tweaks.

**Q.** No substantive tweaking, just

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**A.** In certain circumstances that is true. Look, how many cases have we collected on? A miniscule number percentage-wise.

**Q.** That you actually collect money on?

**A.** Right.

**Q.** As opposed to sending them executions and so forth?

**A.** I am saying in general in the debt collection business, it is a small percentage of accounts that you collect on.

**Q.** What is a small percentage?

**A.** We collect on a small percentage of cases, a very small percentage. So most of them you are actually right, right.

**Q.** Most of them I am actually right what?

**A.** Most of them you are right with what the balance is.

**Q.** Because most of them you don't actually collect anything?

**A.** Yes.

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1 G. KAVULICH  
 2 MR. KESHAVARZ: Let take a  
 3 break.  
 4 (Whereupon, a short recess was  
 5 taken.)  
 6 **Q.** So we started talking before,  
 7 and I am not trying to rehash an argument,  
 8 but where it says zero interest thereon is  
 9 due, you believe that is the total balance  
 10 and not just the interest accruing over  
 11 from date of the judgment?  
 12 **A.** Correct.  
 13 **Q.** Where does that zero dollar  
 14 come from, where from your computer system?  
 15 **A.** It should not say zero.  
 16 **Q.** What should it say?  
 17 **A.** It shouldn't say zero.  
 18 **Q.** What should it say?  
 19 **A.** It should account for the  
 20 payments that have been made against that  
 21 judgement.  
 22 **Q.** But correct me if I am wrong  
 23 Exhibit 2 is generated by your office;  
 24 correct?  
 25 **A.** Yes.

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1 G. KAVULICH  
 2 **A.** Well, it totals the payments  
 3 you have to do subtraction.  
 4 **Q.** So your software shows the  
 5 amount of the judgements and it shows the  
 6 amount of the payments?  
 7 **A.** Correct.  
 8 **Q.** Your software doesn't show the  
 9 amount due. You would have to manually  
 10 find that out? You would have to manually  
 11 subtract that; correct?  
 12 **A.** Well, we actually, if somebody  
 13 calls, we will just subtract the amount, if  
 14 somebody calls us, I am thrilled they are  
 15 calling us so we don't even account for the  
 16 interest. Like just using this, for  
 17 example, we say you owe \$4,352.74.  
 18 **Q.** And where would you get that  
 19 number to tell the consumer that?  
 20 **A.** From here, looking at the  
 21 screen, Exhibit 4.  
 22 **Q.** But the screen, tell me from  
 23 looking at Exhibit 4 what the balance on  
 24 the judgment account is separate from the  
 25 interest, if you know?

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1 G. KAVULICH  
 2 **Q.** And it has a specific date?  
 3 **A.** Yes.  
 4 **Q.** Are you saying that where it  
 5 says zero, it should reflect the current  
 6 balance on the date you signed the  
 7 execution that credits all payments on that  
 8 judge?  
 9 **A.** Yes, and then say plus  
 10 interest, yes.  
 11 **Q.** But this is what I am trying to  
 12 get at, to get clarity on, your office does  
 13 not know what the balance on the judgment  
 14 account is, correct?  
 15 **A.** We know how much was paid. We  
 16 don't know what the interest, what the  
 17 interest added to that would be, yes.  
 18 **Q.** So putting aside the interest  
 19 for a second. Does your system tell you  
 20 what the balance is due on the judgment,  
 21 putting aside interest payments?  
 22 **A.** You have to do the math. We  
 23 have to manually do the math.  
 24 **Q.** You have to add up all the  
 25 payments?

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1 G. KAVULICH  
 2 **A.** Well, on this we collected a  
 3 hundred and fifty-three dollars and change  
 4 more than the judgment so this would be a  
 5 little bit different.  
 6 **Q.** If the consumer called, Miss  
 7 Potter or Mr. Morales called you, you would  
 8 tell them more has been paid than the face  
 9 value of the judgement, but you don't know  
 10 how much?  
 11 **A.** Right, we will check with the  
 12 marshal and call you back or e-mail you if  
 13 you want.  
 14 **Q.** Does your system differentiate  
 15 between payments that are paid by the  
 16 judgment debtor Miss Potter and the  
 17 punitive judgment debtor Mr. Morales? Does  
 18 your system tell you we got this much from  
 19 this person and this much from this person?  
 20 **A.** Yes, it will show, I am  
 21 referring to Exhibit 4, this says Potter.  
 22 This would be Potter. It does say Potter.  
 23 It will have income execution with the  
 24 judgment debtor's name like it does here.  
 25 Maybe with the old system we didn't but the

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164

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2 new system does.

3 Q. You are looking at the bottom

4 of page one; correct?

5 A. Correct.

6 Q. You are looking at the list of

7 payments that are made; correct?

8 A. Correct, and also one of the

9 two judgment execution devices and to who

10 that would be, or against whom that would

11 be. The way our system now does it, just

12 make believe we got payments from him;

13 right, it would continue up here and we

14 would know they came from him.

15 Q. So this first line here in the

16 middle of the page, Exhibit 4, does it say

17 total amount collected?

18 A. No, that follows to the left.

19 This says two things. This has the amount

20 collected, which should come after the

21 entry of the property execution or income

22 execution or stipulation device. So say

23 there was nothing here. There was a blank

24 slate for now. It would show income

25 execution John Doe and the amount of the

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164

165

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2 judgment. Then it will show the payments

3 from John Doe. And if there were two

4 people on the judgement, it would show Jane

5 Doe going up.

6 Q. Let's assume for a moment, we

7 can go through the document later, let's

8 assume for the moment you, in fact, used

9 two marshals to attempt to collect on this

10 index number. If you got a payment from

11 one marshal, say for Miss Potter, and you

12 got payments from another marshal, say for

13 Mr. Morales, who keeps track of the total

14 amount due on the judgment?

15 A. If that happened, we would

16 send, I can't imagine an instance where we

17 would have two income executions -- it is

18 rare that happens -- we would advise the

19 marshal two in your example how much we had

20 collected from the other debtor, the

21 co-judgment debtor. But I can't think one

22 where we have two income execution where we

23 would use different marshals, because that

24 is where it becomes problematic.

25 Q. Because you wouldn't, know your

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165

166

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2 system?

3 A. It would be too much of a

4 bookkeeping headache for us to keep track

5 and to follow a particular file and then

6 really leave it to the marshal to do it.

7 So we would use the same marshal if we had

8 two income executions.

9 Q. We talked about the numbers

10 that are put into the documents that you

11 issue to the marshal or to the bank to

12 execute on money, execute to get money on a

13 judgement. If the system is set up and you

14 get payments from one marshal and you send

15 it to another marshal to execute, the

16 system is not set up to account for the

17 balance due from the first marshal; right?

18 A. That is why we generally don't

19 do that. What I see here is, what I think,

20 although it is not indicated, because our

21 old system didn't say which marshal like

22 this one does, it probably went to

23 Bienstock. And since I don't use Bienstock

24 anymore, that is why it was sent to some

25 other marshal. This was the one off.

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166

167

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2 Q. You don't know that. How would

3 you know that? You would have to go back

4 through the system and check manually each

5 of the accounts where there was more than

6 one alleged judgment debtor?

7 A. If it happened, it would be a

8 departure from policy, yes.

9 Q. And the policy is to try to

10 send it to one marshal?

11 A. To the same marshal, yes.

12 Q. That's what you mean by policy?

13 A. Yes.

14 Q. When does the marshal tell you,

15 if at any point, what the actual balance is

16 on a judgment?

17 A. I don't think they

18 affirmatively tell us until the judgment is

19 satisfied. But, in other words, every,

20 they send like when we got the payments

21 from Miss Potter on June 5, 2010 it didn't

22 say fifty-five dollars remaining balance, I

23 don't think. But I would have to review

24 the remittent sheets.

25 Q. When the marshal tells you the

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167

1 G. KAVULICH  
 2 balance on a certain date, you don't  
 3 reflect that balance anywhere in your  
 4 records, right?  
 5 **A. I don't think the marshal gives**  
 6 **us the balance as we go along. It will**  
 7 **say, I am making this up, two hundred**  
 8 **dollar payment, a hundred applied to**  
 9 **principal and a hundred applied to**  
 10 **interest.**  
 11 **Q.** If the marshal is able to keep  
 12 track of the balance due, why is your  
 13 office not able to do that?  
 14 **A. That's what I said to my IT**  
 15 **people.**  
 16 **Q.** Is the interest running from  
 17 the principal amount of the judgement, from  
 18 the date of the judgement, or does the  
 19 interest run on the balance due as the  
 20 payments are made?  
 21 **A. Does the interest run from?**  
 22 **Q.** Let's say, for example, you  
 23 have a thousand dollar judgment a year ago,  
 24 and there is a 9 percent interest, so you  
 25 already owe a thousand and ninety dollars.

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168

1 G. KAVULICH  
 2 So if you have a judgement for a thousand  
 3 dollars, and a month later you pay nine  
 4 hundred dollars, at the end of the year, do  
 5 you owe ninety dollars of interest or do  
 6 you have to recalculate the amount of  
 7 interest, you know?  
 8 **A. Well, interest runs during the**  
 9 **whole, I mean, it does not stop running.**  
 10 **Q.** But is the interest set up to  
 11 run, say in my second example where you  
 12 make a payment a month clear, and you  
 13 reduce the balance, in a year is the  
 14 interest running on the entire amount of  
 15 the judgement even though there are  
 16 payments made in that one-year period or do  
 17 you know?  
 18 **A. If there's a payment and there**  
 19 **is a judgement for a thousand dollars, a**  
 20 **month later --**  
 21 **Q.** Someone pays nine hundred  
 22 dollars.  
 23 **A. I assume it would be a thousand**  
 24 **plus interest for that month less that**  
 25 **payment.**

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169

1 G. KAVULICH  
 2 **Q.** Then they run 9 percent  
 3 interest on the hundred dollars?  
 4 **A. Yes, let's say on a hundred and**  
 5 **three dollars or whatever it was. I don't**  
 6 **know.**  
 7 **Q.** So the interest would be run on  
 8 the decreasing balance; is that correct?  
 9 **A. Yes, it wouldn't be on the**  
 10 **monies that are not owed.**  
 11 **Q.** Because the thing that confuses  
 12 me and has always confused me, when I look  
 13 at the bank restraint notices and the  
 14 execution notices, it says interest from  
 15 the date of the judgement, but it does not  
 16 say the interest on what. Is it interest  
 17 on the judgment itself or is it interest on  
 18 the decreasing balance?  
 19 **A. I would imagine it is less so,**  
 20 **in other words, if you have a five thousand**  
 21 **dollars judgment, you have four hundred**  
 22 **dollars left, I imagine the interest is on**  
 23 **four hundred.**  
 24 **Q.** Do you happen to know if that  
 25 is how the marshal calculates interest?

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170

1 G. KAVULICH  
 2 **A. Am I metaphysically sure, no,**  
 3 **but I know they are supervised by the**  
 4 **department of investigation and the City**  
 5 **and they are pretty tough, from what I**  
 6 **understand.**  
 7 **Q.** You don't give the payment  
 8 history to the marshal, you just give the  
 9 total amount paid; right?  
 10 **A. Usually, yes, we will call**  
 11 **them. What I started doing is, just which**  
 12 **I just learned how to do, is copying it,**  
 13 **cutting it and pasting it.**  
 14 **Q.** You just started doing that  
 15 recently?  
 16 **A. Yes.**  
 17 **Q.** Up to that point when you  
 18 informed the marshal how much was due, the  
 19 marshal would take the balance that you  
 20 claimed was due and they would run interest  
 21 on the full amount of the judgement until  
 22 the date of the execution; is that right?  
 23 **A. Say that again.**  
 24 **Q.** You tell the marshal about the  
 25 balance due?

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171

G. KAVULICH

**A. Of five thousand dollars.**

**Q.** Until recently you didn't tell him the payment history?

**A. Correct, I didn't give the dates of the payments. But I would tell him how much they would be.**

**Q.** So the marshal was calculating interest on the full amount of the judgement all the way through the date of the execution?

**A. I don't know. You would have to ask the marshal.**

**Q.** Let's move on to the landlord-tenant suits. Going back to Exhibit 5, the collection lawsuit against Miss Potter and Mr. Morales, you were suing Miss Potter for the same debt that Rosewall had a money judgment against her for; right?

**A. Yes.**

**Q.** It was not for rent due after that judgment; right?

**A. No, but it included both.**

**Q.** It included rent due after the

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172

G. KAVULICH

action or were you also suing her for rent after the entry of the money judgment?

**A. Both.**

**Q.** What amount was for the debt for rent after the landlord-tenant, after the money judgment against Potter in the landlord-tenant action?

**A. I believe, April and May of 2008.**

**Q.** Why do you say that?

**A. Because the judgment was for monies, according to my recollection, was for monies due through March and this summons seeks monies for through and including March but also additional to that, April and May of 2008.**

**Q.** If you go down to the third action, it says "plaintiff seeks to recover damages from the defendant in the sum of five hundred dollars representing reasonable attorney's fees together with costs and disbursements of this action and for such other further relief as the court may deem just." Let me ask you this: Do

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174

G. KAVULICH

judgement?

**A. According to my rudimentary Spanish, it looks like we scanned the English version of the summons and the Spanish version of the complaint.**

**Q.** You don't have the full summons and complaint for a lawsuit you filed against Miss Potter and Mr. Morales?

**A. Now we do. Now it scans automatically. It may well very be in there. Here it is.**

**Q.** What is the Bates stamp?

**A. That's 34.**

**Q.** It is Bates stamped Kavulich parenthesis Morales 34?

**A. Yes.**

MR. KESHAVARZ: So we are amending Plaintiff's 5 to add this subsequent two pages. So Exhibit 5 is now Kavulich 31 through Kavulich 34.

**Q.** My question is as to Miss Potter, were you suing her in Exhibit 5 for the money judgment in landlord-tenant

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173

G. KAVULICH

you make this five hundred dollar attorney fees demand for every lawsuit you file to collect rent?

**A. Mostly, yes.**

**Q.** When you make a demand for attorney fees for five hundred dollars, you don't know if the lease agreement allows for the recovery of attorney's fees, do you?

**A. That is why I say mostly.**

**There are cases where there aren't lease agreements. And we sue for, rent is now called, what otherwise is called rent, is called use and occupancy. In those cases we don't use ask for attorney fees because there is no contractual rate. But just about every lease I have seen, does allow for it. So the answer it, yes, mostly we do ask for attorney's fees which ultimately are waived because it is on default. I don't remember one case where we collected legal fees, but the answer is, yes, there has to be a lease for us to sue.**

**Q.** When you file these

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175

176

1 G. KAVULICH

2 landlord-tenant suits you don't look to see

3 based on a contract, you don't look to see

4 if that specific lease has a provision

5 about the recovery of attorney's fees, do

6 you?

7 **A. Yes. Sure.**

8 **Q.** Every time you file a landlord,

9 a suit for collection of rent, you also

10 look at that specific lease at issue to

11 determine whether there are rights to

12 attorney's fees, are you saying that?

13 **A. No, I am saying not at the time**

14 **when we do the summons. That time is**

15 **actually determined in anticipatorily when**

16 **the case is entered because, for example,**

17 **the notes will say, no late or legal fees,**

18 **no lease, must be use and occupancy.**

19 **Q.** That is put in by Mercedes when

20 she puts it into the system?

21 **A. Was. Now it is by me for the**

22 **last five years.**

23 **Q.** You are saying Mercedes is to

24 interpret a lease agreement to determine

25 whether there is a right to attorney's fees

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177

1 G. KAVULICH

2 in the lease agreement and put that into

3 the computer notes; right?

4 **A. She is not supposed to**

5 **interpret the lease agreement. She is**

6 **supposed to look at it and see and it says**

7 **late and legal fees, usually. If I may,**

8 **most of my clients have rent-stabilized**

9 **apartments, use the standard form apartment**

10 **lease.**

11 **Q.** I will ask you to take a look

12 at this in a second. Let me ask, let me

13 just finish up this line of questioning.

14 Mercedes would be the one responsible when

15 she opens up the account on your computer

16 system to review the lease and determine if

17 there is a right to attorney's fees; is

18 that right?

19 **A. Yes.**

20 **Q.** You don't just assume there is

21 a right to attorney's fees if it is a

22 written contract?

23 **A. No.**

24 **Q.** She is the one who look at

25 those leases to make that determination;

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178

1 G. KAVULICH

2 correct?

3 **A. She is the one who did.**

4 **Q.** While she worked there?

5 **A. Yes.**

6 **Q.** While she worked there, that

7 was her responsibility and you didn't look

8 at the leases, you just relied on what

9 Mercedes put in the notes?

10 **A. Yes.**

11 **Q.** Based on what the lease said?

12 **A. Yes.**

13 MR. KESHAVERZ: Please mark

14 this as Plaintiff's 6 for

15 identification.

16 (Whereupon, the aforementioned

17 document was marked as Plaintiff's

18 Exhibit 6 for identification as of

19 this date by the Reporter.)

20 **Q.** I am showing you what has been

21 marked as Plaintiff's 6, Bates stamped

22 Kavulich 4 through Kavulich 9 and is this

23 the lease upon which you are basing the

24 collection lawsuit that is Exhibit 5?

25 **A. I believe so, yes.**

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179

1 G. KAVULICH

2 **Q.** When you said the standard

3 lease form, what did you mean?

4 **A. As it says on the first page**

5 **there is a standard form of apartment lease**

6 **that is issued by the Real Estate Board of**

7 **New York that most landlords use for rent**

8 **stabilized leases.**

9 **Q.** I want to point your attention

10 to Bates stamped Kavulich 6 and tell me if

11 you can read paragraph 18C3.

12 **A. Yeah.**

13 **Q.** So 18C says whether the

14 apartment is re-rented or not, you must pay

15 the owner as damages; right?

16 **A. You must pay to the owner as**

17 **damages, yes.**

18 **Q.** So sub C3 is owner's expenses

19 for attorney's fees; correct?

20 **A. Yes.**

21 **Q.** This is the language you use as

22 a basis for demanding five hundred dollars

23 in attorney's fees in almost all of the

24 rent cases that you file based on a written

25 contract; correct?

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180  
G. KAVULICH

**A. I believe there is another section. I haven't looked at one of these from 2006 in a long time.**

**Q.** Take your time.

**A. Well, also on page 4 of the lease, Bates stamped page 7 at the top, sub 5, "any legal fees or disbursements for illegal actions or proceedings brought by owner against you because of a lease default by you or defending lawsuits brought against owner because of your actions." I guess those are the only two.**

**Q.** But the thing you just read is not one of the remedies?

**A. You are correct, it is not a remedy. It says fees and expenses as the owner's rate, you must reimburse owner for any of the following fees and expenses incurred by owner. That is Bates stamped page 6 at the bottom paragraph 20, sub-paragraph A and of that subparagraph 5, is what I read just a minute ago.**

**Q.** When you file civil suits to collect rent, the landlord does not

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180

182  
G. KAVULICH

debt collected; correct?

**A. Other than the suit fees, yes.**

**Q.** So your client doesn't actually incur the attorney's fees; right? He does not actually pay any attorney's fees, it is not incurred; is that right?

**A. Depending on the case, maybe not, but otherwise, yes, of course, he incurs fees. He's losing, he's not only just, he's losing money from the monies that are owed him that go to us that is a legal fee.**

**Q.** But that is a fee that would be paid if monies is collected?

**A. Correct.**

**Q.** It is not an obligation that the landlord incurs by hiring you to file a collection lawsuit?

**A. Not at that time.**

**Q.** So at the date you file the collection lawsuit, the landlord has not incurred any attorney's fees at that point; correct?

**A. Correct.**

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182

181  
G. KAVULICH

actually pay you to file a suit, you just get a percentage of what is collected; right?

**A. No, that's not true.**

**Q.** In what way is that not true?

**A. Some landlords play the suit fees.**

**Q.** Which are the filing fees?

**A. Yes, and process serving.**

**Q.** Other than that when you get hired to file suit to collect rent, you don't get paid anything by the landlord other than the costs of court for some of the landlords; right?

**A. Right.**

**Q.** Is that most of the landlord's?

**A. Half and half.**

**Q.** Do you bill your clients for attorney's fees, not expenses but bill your clients for attorney's fees for?

**A. A contingency fee is considered our legal fee.**

**Q.** The only thing you charge your client is the amount of a percentage of the

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181

183  
G. KAVULICH

**Q.** How did you come to the number five hundred dollars?

**A. It is what they had on my old firm's summons.**

**Q.** That was Gutman & Mintz?

**A. Yes.**

**Q.** To your knowledge, does Gutman Mintz still use that?

**A. I don't know.**

**Q.** So when you filed the civil lawsuit, Exhibit 5, you knew that there was no judgement against James Morales; correct?

**A. No.**

**Q.** Why would you file a lawsuit to obtain a judgement against a consumer if you already had a judgment for most of the debt you were seeking to collect?

**A. There was a momentary lapse of consciousness here. Because when the case was opened, it seemed as though there was a judgement, and I am reading from the notes. I am recollecting myself from Exhibit 4, there was a judgement, and then somehow it**

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183

184

1 G. KAVULICH

2 went as if there wasn't a judgement, and

3 then somebody realized there was a

4 judgement. So we instructed the process

5 server not to serve the summons. And we

6 filed a, which we may or may not have been

7 done, I don't know off the top of my head,

8 but then we filed a notice of

9 discontinuance.

10 Q. You don't recall this, this

11 basis of?

12 A. Off the notes. I don't recall

13 this independently.

14 Q. Your testimony is based solely

15 on the documents in front of you?

16 A. Yes.

17 Q. Not based on your independent

18 recollection?

19 A. Yes.

20 Q. So after the complaint was

21 withdrawn, then it says strike S & C we

22 have FJ; correct?

23 A. Yes.

24 Q. So someone looked at your file

25 to see if there was a judgement?

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184

185

1 G. KAVULICH

2 A. I did.

3 Q. But looking at your file, there

4 was, in fact, no money judgement against

5 Mr. Morales; is that correct?

6 A. In retrospect it is true.

7 Q. Because a computer system in

8 court would not reflect a money judgment

9 entered against Mr. Morales in the

10 landlord-tenant action because, in fact,

11 there was no such judgement.

12 A. If there is not a judgment it

13 is very unlikely a court computer would

14 should that; correct.

15 Q. Would show a money judgement.

16 If there is no money judgement, the

17 computer system at the courthouse --

18 A. Is not going to show there is

19 one; correct.

20 Q. Who made that determination

21 there was a final judgment?

22 A. After the issuance of the

23 summons, me.

24 Q. How do you know that?

25 A. We just said that.

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185

186

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2 Q. Because of the handwritten

3 notes?

4 A. No, because, I don't remember

5 exactly but it states it here in the notes

6 as Exhibit 1.

7 Q. I am trying to figure out who

8 on July 23, 2008, realized there was a

9 final judgement? How do you know it was

10 you as opposed to someone else on your

11 staff?

12 A. Because it is indicated, I

13 updated the note.

14 Q. Where is that indicated?

15 A. To the right.

16 Q. Let me jump back for a second.

17 When you talked before about one of your

18 staff, you said they intentionally, and

19 correct me if I am wrong, put documents in

20 the wrong consumer's file?

21 A. That is what I am told. I

22 don't know if it is factually true. Told

23 is that what I was told.

24 Q. As a factual matter, documents

25 for one consumer would not be in that

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186

187

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2 consumer's file sometimes?

3 A. Do documents get scanned into

4 the wrong files sometimes, yes, even by the

5 guy I have now.

6 Q. What I am trying to get at is

7 this: There aren't any other documents in

8 your system other than what you have

9 produced in this case?

10 A. In this case, yes.

11 Q. Regardless of where it is

12 filed?

13 A. Right I don't have another file

14 somewhere else.

15 MR. KESHAVARZ: Mark this

16 please as Plaintiff's 7 for

17 identification.

18 (Whereupon, the aforementioned

19 document was marked as Plaintiff's

20 Exhibit 7 for identification as of

21 this date by the Reporter.)

22 Q. I am showing you what has been

23 marked as Plaintiff's 7. These are two

24 documents that were produced by your

25 attorney in this case Kavulich 36 and

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187

188

1 G. KAVULICH

2 Kavulich 37. Are these affidavits of

3 service in the collections lawsuit filed in

4 civil court?

5 **A. 35 and 36, yes.**

6 **Q.** So according to these documents

7 the summons and complaint was actually

8 served on Mr. Morales and Miss Potter;

9 correct?

10 **A. Yes.**

11 **Q.** The process server filed that

12 return of service and provided a copy to

13 your office; is that correct?

14 **A. Yes.**

15 **Q.** But you don't know if the

16 summons and complaint was actually served

17 on Miss Potter or Mr. Morales. All you

18 know is what the affidavit of service

19 claims?

20 **A. I know that the affidavit of**

21 **served states they were both served of**

22 **suitable age and discretion, but was I**

23 **there, no.**

24 **Q.** Do you know this process

25 server? Have you used this process server

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188

189

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2 before?

3 **A. We don't use this company**

4 **anymore. Do I know him? No.**

5 **Q.** Which company was that?

6 **A. It was a gentleman by the name**

7 **of Lawrence Marsh.**

8 **Q.** Is there something on this

9 document that tells you that?

10 **A. No, I just know.**

11 **Q.** He notarized the signature of

12 the process server; correct?

13 **A. It look like Sheryl Marsh to**

14 **me.**

15 **Q.** Mr. Evans or Mrs. Evans was the

16 process server that worked for Mr. Marsh?

17 **A. Yes.**

18 MR. KESHAVERZ: Mark this

19 please as Plaintiff's 8 for

20 identification.

21 (Whereupon, the aforementioned

22 document was marked as Plaintiff's

23 Exhibit 8 for identification as of

24 this date by the Reporter.)

25 **Q.** I am showing you Plaintiff's 8.

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189

190

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2 Does that appear to be a Notice Of

3 Discontinuance you filed in the civil court

4 action against Ms. Potter and Mr. Morales?

5 **A. Yes.**

6 **Q.** Even though Mr. Morales and

7 Miss Potter were served in a civil court

8 lawsuit, your office did not notify either

9 Miss Potter or Mr. Morales that the suit

10 had been discontinued; is that correct?

11 **A. No, that is false.**

12 **Q.** In what way is that false?

13 **A. We mailed these certified out**

14 **to the defendants.**

15 **Q.** You are referencing Exhibit 8?

16 **A. Yes, we mailed notices of**

17 **discontinuance to the respective parties,**

18 **the defendants.**

19 **Q.** But Exhibit 8 does not include

20 a certificate of service?

21 **A. No.**

22 **Q.** There is nothing in your

23 collection notes that indicate that a copy

24 of the Notice of Discontinuance was, in

25 fact, mailed to Mr. Morales or Miss Potter;

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190

191

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2 correct?

3 **A. No.**

4 **Q.** No, there isn't any?

5 **A. No, there isn't any.**

6 **Q.** Sitting here today you don't

7 know if, in fact, Miss Potter or Mr.

8 Morales was, in fact, mailed a copy of the

9 Notice of Discontinuance; is that correct?

10 **A. Metaphysically, no. I don't**

11 **know, metaphysically know it was not sent,**

12 **but I know it was our procedure.**

13 MR. KESHAVERZ: Let's take a

14 quick break.

15 (Whereupon, a short recess was

16 taken.)

17 **Q.** So do you believe any liability

18 in this case is due to the action or in

19 action of Gutman Mintz?

20 **A. No.**

21 **Q.** Have you ever attempted to

22 collect on a judgement that has been

23 vacated or non-existent other than this

24 case?

25 **A. First of all, never**

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191

192

1 G. KAVULICH

2 **intentionally and not that any come to**

3 **mind. I mean Mr. Morales.**

4 Q. Can you think about it and let

5 us know when we come back.

6 MR. KESHAVERZ: We have an

7 agreement that since Mr. Kavulich has

8 to leave at 2:30 today, we have an

9 agreement the deposition will

10 continue at my office at 10:30 on

11 December 1st, is that our agreement?

12 MR. PASHKIN: Yes.

13 Q. The account that comes to you

14 from Rosewall, you said that come through a

15 property management company?

16 A. Yes.

17 Q. Who did you say that was?

18 A. **Metropolitan Properties.**

19 Q. When I say communications with

20 Rosewall, those are all communications that

21 go through this property management

22 company?

23 A. **They are with the Met**

24 **Properties management company.**

25 Q. Any communications about this

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193

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2 case, about the debt and so forth those are

3 only communications through the property

4 management company on behalf of Rosewall;

5 correct?

6 A. **Correct.**

7 Q. Well, let's start from the

8 beginning. What information have you

9 provided when started opening this case for

10 Mr. Morales?

11 A. **We had, it is unrelated to this**

12 **because I don't represent them anymore, I**

13 **would go to their office physically and I**

14 **would go through the files and take out**

15 **the, you know, the necessary documents and**

16 **copy them and bring them back to my office.**

17 Q. Is that for all accounts that

18 go through that property management

19 company?

20 A. **For that particular management**

21 **company, yes.**

22 Q. About how many accounts would

23 do that?

24 A. **Maybe ten.**

25 Q. And the total number of cases

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193

194

1 G. KAVULICH

2 you did for Rosewall are how many?

3 A. **A dozen.**

4 Q. Was there a particular reason

5 you no longer are filing cases on behalf of

6 Rosewall?

7 A. **Or through Metropolitan, yes,**

8 **but it is unrelated to this. We had a**

9 **personality thing. He hooked me up with a**

10 **good client, I sent him a thank you. I got**

11 **him a gift certificate to a restaurant out**

12 **on Long Island. I didn't know restaurants**

13 **on Long Island so I had to do research and**

14 **find out what was a good one, and he never**

15 **thanked me and we had words.**

16 Q. Do you know if that is the same

17 individual --

18 A. **No, it was not the guy that**

19 **came here.**

20 Q. I think from his testimony, he

21 was the only point of contact for Rosewall

22 cases. He was not --

23 A. **I am saying another part of**

24 **Metropolitan. One of the guys, the guy he**

25 **works with recommended me to someone else.**

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194

195

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2 **It had nothing to do with that.**

3 Q. Nothing to do with collection

4 on behalf of Rosewall?

5 A. **Correct.**

6 Q. As this case progressed, and I

7 guess generally for the Rosewall cases, do

8 you communicate back and forth with

9 Rosewall through their property management

10 company or how does that work?

11 A. **Now, you mean, or back then?**

12 Q. Back when you had cases with

13 Rosewall and other communications with the

14 property management company?

15 A. **It was not that many. They**

16 **would call us. If you are looking for how**

17 **it worked, he would say give me a call,**

18 **Gary, I have some cases for you to pick up.**

19 **I would go there he would have a list.**

20 **Somebody would show me where the files are.**

21 **I would sit down at a table and take out**

22 **documents and copy them and that was it.**

23 Q. Were they both judgment

24 accounts and filing suits to collect rents?

25 A. **When I sat down at the table**

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195

196  
G. KAVULICH

before I opened the file, I would not know.  
There are people who vacated those  
properties owing monies.

Q. So when you looked through the  
file, you would copy, make a photocopy of  
the judgment, if there was a judgement?

A. If they had it in their file,  
yes.

Q. Do they normally have a copy of  
the court file from the prior  
landlord-tenant attorney?

A. Sometimes they would, and  
sometimes they would not.

Q. Would they normally have a copy  
of the judgement if there was a judgment  
entered?

A. Sometimes there were and  
sometimes there wasn't.

Q. Before got an account to  
collect on a judgement, you would check the  
file to see if there was, in fact, a  
judgement?

A. We would check there and then  
if there was any sort of indication there,

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196

196  
G. KAVULICH

the only client I did that for,  
regrettably, if I had personally handled,  
picked up the case, then, no, she would  
not. But those were not most of the cases.  
In other words, I didn't go and pick up  
most of the cases and go through the  
clients files. I might go and pick up  
files that they put together or receive  
files in the mail, or grab them off the  
fax. But if I received a case in the mail,  
then I would just give it to Mercedes. But  
in this particular case, I physically went  
there and I physically went through the  
client's file and I physically wrote the  
note.

Q. You say that because that is  
how you, that is the process for the  
Rosewall accounts?

A. For the Metropolitan  
Properties, yes, and also reviewing the  
documents.

Q. So whether there was a  
determination whether there was a judgement  
or not for Mr. Morales and Miss Potter,

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198

197  
G. KAVULICH

maybe then we would go to court.

Q. So you made the determination,  
did you make the determination when you got  
the account about going through their file  
whether there was a judgment or not, a  
money judgement?

A. I would say, yes, because  
apparently we came up with one here, but  
pursuant to my review of the documents  
earlier and my contemporaneous notes at the  
time, that's what I did come up with. I  
don't recall now.

Q. Correct me if I am wrong, was  
it Mercedes' decision to note whether the  
account was a judgment account or a  
collections lawsuit account?

A. Generally, yes, but on the  
cases where I would go and pick up, in  
other words, as I mentioned before,  
sometimes, well, then, I don't know if we  
had any e-mailed cases, they would come in  
the mail or we would go and pick them up,  
they would fax them. God forbid. If I was  
involved in, like I mentioned, this isn't

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197

199  
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that would not have been based on a review  
of the housing court computer; right?

A. That note was written while I  
was sitting in the client's office.

Q. What note?

A. That I referenced earlier FJ.

Q. So you saw a money judgement  
against Miss Potter, is that what you are  
saying you or don't know?

A. Again, I am not the brightest  
bulb in the bunch, but I would know  
generally if there were two. I screwed up  
and wrote FJ, which would have meant it was  
against both people. Because these  
situations come up or have come up and do  
come up now, for instance, we will open up  
two cases, like as well we should have done  
here, open up a case for, with hindsight  
opened up one case against Miss Potter  
solely as to the judgement, and opened up  
one case, another case as to Mr. Morales  
for the non-judgement debt.

Q. So for Mr. Morales you would  
file a civil court case and for Miss Potter

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199

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2 you would just go through execution?

3 **A. Correct.**

4 **Q.** There was a stipulation --

5 **A. From housing court.**

6 **Q.** A stipulation of settlement

7 from housing court?

8 **A. Yes.**

9 **Q.** Was that a basis for you

10 thinking there was a judgment in this case?

11 **A. I don't remember but I think**

12 **that is probably what it must have been. I**

13 **just read the stip.**

14 **Q.** So based on your review right

15 now, you think maybe that is why?

16 **A. I think that is why?**

17 **Q.** You thought it was a judgement?

18 **A. There was a judgement, but why**

19 **I thought it was a judgement against Mr.**

20 **Morales as well, yes.**

21 **Q.** But don't specifically

22 remember, you are assuming that's the

23 reason, based on looking at the

24 stipulation?

25 **A. Yes.**

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2 **Q.** Because when you filed the, my

3 client claimed the money in the account was

4 exempt?

5 **A. No, I don't think he did.**

6 **Q.** He didn't file an exemption

7 claim form?

8 **A. In this case, no. I think that**

9 **is Prage.**

10 MR. PASHKIN: This seems like a

11 good stopping point. So I will see

12 you on December 1st at 10:30.

13 **Q.** It said in the e-mails with the

14 marshal, that this is another one and this

15 is like the other case, about the fact

16 there was no judgement, do you know what

17 that was about?

18 **A. Who said that?**

19 **Q.** It was in e-mail with the

20 marshal? Do you know what the other case

21 they were referring to was?

22 **A. I don't know.**

23 MR. KESHAVERZ: I can check the

24 e-mail and we can pick that up the

25 next time. See you shortly.

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2 (Whereupon, at 2:30 P.M., the

3 Examination of this witness was

4 adjourned.)

5 . . . .

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203

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2 D E C L A R A T I O N

3

4 I hereby certify that having been

5 first duly sworn to testify to the truth, I

6 gave the above testimony.

7

8 I FURTHER CERTIFY that the foregoing

9 transcript is a true and correct transcript

10 of the testimony given by me at the time

11 and place specified hereinbefore.

12

13

14

15 \_\_\_\_\_

16 GARY KAVULICH

17

18

19 Subscribed and sworn to before me

20 this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

21

22 \_\_\_\_\_

23 NOTARY PUBLIC

24

25

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203

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## E X H I B I T S

## PLAINTIFF'S EXHIBITS:

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	PAGE
1 - 3	Documents to restrain	
	Bank account	63
4	Snapshot Bates stamped	
	1 through 3 docs	104
5	Summons & Complaint	131
6	Lease	178
7	Affidavits	187
8	Notice of Discontinuance	189

(Exhibits retained by Counsel.)

## I N D E X

EXAMINATION BY	PAGE
MR. KESHAVERZ	59

INFORMATION AND/OR DOCUMENTS REQUESTED  
INFORMATION AND/OR DOCUMENTS PAGE  
(NONE)

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204

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## C E R T I F I C A T E

STATE OF NEW YORK )  
: SS.:  
COUNTY OF KINGS )

I, ELIZABETH FORERO, a Notary Public  
for and within the State of New York, do  
hereby certify:

That the witness whose examination is  
hereinbefore set forth was duly sworn and  
that such examination is a true record of  
the testimony given by that witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or by marriage and that I  
am in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 6th day of December 2016.



ELIZABETH FORERO

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205

<b>\$</b>	142:24, 142:25, 143:16, 150:5, 150:10, 150:17, 151:5, 151:24, 157:21 <b>2008</b> [36] - 85:13, 85:20, 86:8, 87:17, 88:3, 88:16, 88:17, 94:21, 95:9, 95:15, 101:10, 101:25, 106:8, 106:12, 108:24, 109:8, 113:8, 114:2, 114:12, 114:19, 115:4, 115:22, 116:4, 116:14, 117:22, 121:14, 122:5, 123:15, 125:6, 127:9, 128:10, 132:10, 148:14, 174:10, 174:17, 186:8 <b>2009</b> [4] - 142:15, 142:25, 143:2, 146:3 <b>2010</b> [2] - 142:15, 167:21 <b>2011</b> [1] - 116:18 <b>2013</b> [1] - 148:16 <b>2014</b> [4] - 97:18, 97:23, 98:4, 98:13 <b>2015</b> [17] - 64:17, 66:7, 83:25, 84:14, 85:8, 86:6, 87:15, 87:23, 88:12, 97:12, 103:10, 103:17, 104:6, 138:8, 138:24, 149:3, 150:9 <b>2016</b> [3] - 56:13, 71:19, 205:20 <b>20</b> [1] - 203:19 <b>20s</b> [1] - 118:22 <b>23</b> [1] - 186:8 <b>25</b> [3] - 83:18, 84:2, 84:4 <b>255</b> [1] - 57:16 <b>27</b> [3] - 103:10, 103:17, 104:6 <b>2:30</b> [3] - 59:19, 192:8, 202:2	<b>5</b>	114:13, 122:19, 124:4, 124:17, 131:4, 135:14, 135:20, 136:18, 136:20, 140:7, 140:9, 141:11, 144:17, 155:11, 158:25, 160:19, 161:14, 162:15, 162:24, 166:16, 177:15, 192:13, 196:20, 197:5, 197:16, 197:17, 201:3, 204:9 <b>accounting</b> [1] - 61:24 <b>accounts</b> [13] - 74:8, 74:15, 90:8, 108:20, 125:13, 135:3, 143:3, 159:13, 167:5, 193:17, 193:22, 195:24, 198:19 <b>accrued</b> [1] - 133:25 <b>accruing</b> [4] - 99:18, 99:23, 106:5, 160:10 <b>acknowledged</b> [3] - 100:17, 100:18, 101:2 <b>acknowledging</b> [1] - 101:19 <b>across</b> [1] - 89:7 <b>action</b> [29] - 73:19, 74:7, 95:8, 102:24, 110:11, 110:16, 111:18, 111:22, 114:17, 114:22, 115:8, 120:20, 121:4, 122:20, 123:9, 124:6, 125:14, 127:7, 145:2, 145:3, 174:2, 174:8, 174:19, 174:23, 185:10, 190:4, 191:18, 191:19, 205:16 <b>actions</b> [4] - 122:3, 122:4, 180:9, 180:13 <b>activities</b> [4] - 73:21, 83:4, 120:8, 143:18 <b>actual</b> [5] - 63:4, 115:16, 124:11, 127:2, 167:15 <b>add</b> [3] - 99:13, 161:24, 173:19 <b>added</b> [1] - 161:17 <b>adding</b> [1] - 81:2 <b>addition</b> [1] - 103:24 <b>additional</b> [2] - 72:2, 174:16 <b>additionally</b> [1] - 137:2 <b>address</b> [6] - 80:5, 85:3, 87:7, 94:8, 108:17 <b>addresses</b> [3] - 82:21, 84:17, 94:7 <b>adjourned</b> [1] - 202:4 <b>administer</b> [1] - 58:11 <b>advise</b> [1] - 165:18 <b>affects</b> [2] - 135:18, 135:19 <b>affidavit</b> [2] - 188:18, 188:20 <b>Affidavits</b> [1] - 204:14
<b>1</b>	<b>1</b> [10] - 58:17, 63:10, 63:13, 63:17, 66:2, 104:23, 132:10, 144:25, 204:8, 204:11 <b>10</b> [4] - 83:10, 83:11, 85:7, 85:9 <b>104</b> [1] - 204:11 <b>10580</b> [1] - 59:13 <b>10:30</b> [2] - 192:10, 201:12 <b>11226</b> [1] - 57:11 <b>11241</b> [2] - 56:23, 57:5 <b>11743</b> [1] - 57:17 <b>13</b> [8] - 94:21, 95:9, 95:15, 101:10, 101:25, 109:8, 128:10, 148:14 <b>131</b> [1] - 204:12 <b>147</b> [1] - 59:12 <b>14th</b> [1] - 61:23 <b>15</b> [7] - 77:14, 78:12, 80:19, 82:2, 85:7, 87:14, 88:10 <b>16</b> [2] - 56:22, 57:5 <b>17</b> [1] - 56:13 <b>175</b> [2] - 80:20, 81:3 <b>178</b> [1] - 204:13 <b>18</b> [5] - 64:17, 66:7, 138:8, 138:24, 149:2 <b>187</b> [1] - 204:14 <b>189</b> [1] - 204:15 <b>18C</b> [1] - 179:13 <b>18C3</b> [1] - 179:11 <b>1:16-cv-02134-ALC-JLC</b> [1] - 56:7 <b>1st</b> [2] - 192:11, 201:12	<b>6</b>	
<b>2</b>	<b>2</b> [4] - 63:10, 63:13, 63:17, 133:10 <b>20</b> [7] - 77:24, 78:4, 79:24, 79:25, 81:24, 82:4, 180:21 <b>2006</b> [1] - 180:4 <b>2007</b> [14] - 88:18, 88:24, 106:23, 106:24, 134:19,	<b>7</b>	
	<b>3</b>	<b>8</b>	
	<b>4</b>	<b>9</b>	
		<b>A</b>	

<p><b>affidavits</b> [1] - 188:2  <b>affirmatively</b> [1] - 167:18  <b>afford</b> [1] - 154:12  <b>after</b> [30] - 58:16, 71:15, 71:16, 86:22, 90:20, 102:7, 102:11, 102:13, 102:14, 102:16, 106:23, 106:24, 113:16, 113:21, 120:25, 122:20, 124:5, 125:13, 130:4, 132:17, 150:14, 151:3, 164:20, 172:22, 172:25, 174:3, 174:6, 184:20, 185:22  <b>again</b> [16] - 75:13, 75:19, 91:13, 105:5, 113:24, 122:25, 140:16, 145:14, 145:25, 146:5, 150:24, 153:12, 154:23, 156:15, 171:23, 199:11  <b>against</b> [62] - 56:6, 65:15, 69:21, 69:22, 73:21, 75:25, 103:21, 103:23, 103:25, 104:2, 104:3, 111:18, 113:3, 113:25, 114:5, 114:10, 114:16, 114:21, 123:10, 123:11, 123:23, 124:7, 124:11, 124:15, 124:23, 126:6, 127:20, 128:2, 128:14, 128:19, 129:2, 129:15, 129:20, 131:17, 132:9, 132:22, 133:2, 135:2, 136:21, 140:21, 145:6, 145:12, 145:17, 145:19, 160:20, 164:10, 172:16, 172:19, 173:9, 174:7, 180:10, 180:12, 183:13, 183:17, 185:4, 185:9, 190:4, 199:9, 199:15, 199:20, 200:19  <b>age</b> [2] - 118:24, 188:22  <b>ago</b> [7] - 83:15, 83:18, 85:17, 113:11, 143:8, 168:23, 180:23  <b>agree</b> [1] - 154:20  <b>agreeable</b> [1] - 60:3  <b>AGREED</b> [2] - 58:5, 58:20  <b>agreement</b> [8] - 59:21, 175:8, 176:24, 177:2, 177:5, 192:7, 192:9, 192:11  <b>agreements</b> [2] - 112:24, 175:13  <b>ahead</b> [1] - 84:10  <b>Ahmad</b> [1] - 56:22</p>	<p><b>AHMAD</b> [2] - 57:3, 57:6  <b>alleged</b> [2] - 106:16, 167:6  <b>allow</b> [2] - 110:23, 175:18  <b>allows</b> [1] - 175:8  <b>almost</b> [1] - 179:23  <b>along</b> [3] - 110:24, 157:4, 168:6  <b>always</b> [3] - 150:22, 151:9, 170:12  <b>amending</b> [1] - 173:19  <b>among</b> [1] - 111:15  <b>amount</b> [80] - 64:5, 64:7, 66:4, 69:11, 70:3, 70:11, 70:13, 76:14, 94:12, 94:19, 95:6, 95:10, 95:15, 96:22, 96:23, 97:7, 98:24, 99:22, 100:2, 100:23, 101:3, 101:15, 101:16, 101:23, 102:15, 104:4, 104:9, 105:8, 133:5, 133:8, 133:20, 133:23, 140:16, 140:18, 140:19, 148:7, 148:17, 148:20, 148:22, 148:25, 149:19, 149:20, 150:6, 150:8, 150:21, 150:22, 151:7, 151:8, 151:9, 152:4, 152:7, 152:22, 153:6, 153:16, 153:17, 153:19, 154:2, 155:10, 158:9, 162:5, 162:6, 162:9, 162:13, 164:17, 164:19, 164:25, 165:14, 168:17, 169:6, 169:14, 171:9, 171:21, 172:9, 174:5, 181:25  <b>amounts</b> [5] - 64:2, 65:17, 92:13, 140:10, 152:20  <b>AND</b> [2] - 58:5, 58:20  <b>and/or</b> [1] - 133:16  <b>AND/OR</b> [2] - 204:23, 204:24  <b>animals</b> [1] - 66:20  <b>another</b> [10] - 121:8, 130:6, 141:23, 165:12, 166:15, 180:2, 187:13, 194:23, 199:22, 201:14  <b>answer</b> [3] - 60:20, 175:19, 175:23  <b>answered</b> [4] - 99:24, 100:6, 126:11, 151:23  <b>anticipatorily</b> [1] - 176:15  <b>anymore</b> [5] - 73:24, 137:13, 166:24, 189:4, 193:12  <b>anyone</b> [3] - 58:11,</p>	<p>83:24, 108:7  <b>anything</b> [14] - 65:16, 65:19, 65:22, 78:20, 88:20, 127:22, 128:23, 135:6, 135:8, 142:3, 144:15, 152:10, 159:24, 181:13  <b>anywhere</b> [2] - 76:24, 168:3  <b>apartment</b> [3] - 177:9, 179:5, 179:14  <b>apartments</b> [3] - 119:15, 122:8, 177:9  <b>apologize</b> [1] - 151:22  <b>apparently</b> [3] - 128:4, 133:17, 197:9  <b>appear</b> [3] - 113:14, 115:6, 190:2  <b>Appearance</b> [1] - 56:20  <b>appearance</b> [2] - 113:22, 120:10  <b>appeared</b> [3] - 114:23, 121:18, 123:24  <b>appears</b> [2] - 113:5, 132:11  <b>applicable</b> [1] - 126:20  <b>applied</b> [2] - 168:8, 168:9  <b>approximate</b> [1] - 77:25  <b>approximately</b> [13] - 76:22, 77:8, 81:14, 81:18, 83:7, 83:16, 84:19, 85:5, 87:11, 87:20, 87:24, 88:2, 88:7  <b>approximation</b> [1] - 82:3  <b>April</b> [7] - 97:12, 103:10, 103:17, 104:5, 116:18, 174:9, 174:17  <b>are there</b> [1] - 62:2  <b>aren't</b> [3] - 122:2, 175:12, 187:7  <b>argue</b> [1] - 112:20  <b>argument</b> [1] - 160:7  <b>around</b> [7] - 77:14, 79:25, 85:13, 100:6, 108:24, 150:15, 151:5  <b>arrears</b> [2] - 107:13, 107:14  <b>aside</b> [4] - 103:14, 140:25, 161:18, 161:21  <b>ask</b> [23] - 68:21, 68:24, 69:3, 69:4, 92:17, 103:15, 114:11, 124:3, 134:5, 134:23, 139:2, 139:4, 148:11, 148:12, 155:2, 155:3, 155:8, 172:13, 174:25, 175:16, 175:20, 177:11, 177:12  <b>asked</b> [3] - 100:5, 100:25, 154:4  <b>asking</b> [3] - 79:4, 85:12,</p>	<p>100:7  <b>aspects</b> [1] - 119:20  <b>assets</b> [1] - 74:24  <b>ASSOCIATES</b> [7] - 56:9, 56:9, 56:10, 56:17, 57:14, 57:15, 57:15  <b>Associates</b> [1] - 74:9  <b>assume</b> [9] - 64:18, 69:5, 124:7, 124:9, 145:24, 165:6, 165:8, 169:23, 177:20  <b>assuming</b> [4] - 125:5, 125:6, 145:22, 200:22  <b>assumption</b> [2] - 98:14, 98:15  <b>attached</b> [3] - 129:5, 130:16, 130:20  <b>attempt</b> [2] - 61:6, 165:9  <b>attempted</b> [1] - 191:21  <b>attempting</b> [1] - 125:4  <b>attention</b> [5] - 91:15, 123:20, 123:22, 137:15, 179:9  <b>attorney</b> [13] - 119:22, 120:8, 120:12, 131:7, 131:9, 136:11, 156:8, 157:3, 175:2, 175:7, 175:16, 187:25, 196:12  <b>attorney's</b> [16] - 104:24, 174:22, 175:9, 175:20, 176:5, 176:12, 176:25, 177:17, 177:21, 179:19, 179:23, 181:20, 181:21, 182:5, 182:6, 182:23  <b>attorneys</b> [2] - 89:7, 112:7  <b>Attorneys</b> [2] - 57:4, 57:14  <b>authorized</b> [1] - 58:11  <b>automatically</b> [2] - 151:18, 173:11  <b>available</b> [1] - 127:4  <b>Avenue</b> [2] - 57:10, 57:16  <b>average</b> [10] - 77:2, 77:3, 77:23, 78:2, 78:4, 78:14, 78:23, 82:2, 83:8, 83:12  <b>away</b> [3] - 89:10, 91:15, 133:4</p>
<b>B</b>			
<p><b>back</b> [27] - 59:15, 76:13, 80:4, 83:25, 85:20, 88:24, 92:11, 92:19, 103:4, 113:15, 114:2, 114:12, 115:4, 123:22, 137:10, 146:4, 155:17, 157:11, 163:12, 167:3, 172:15, 186:16, 192:5, 193:16,</p>			

<p>195:8, 195:11, 195:12  <b>background</b> [2] - 59:23, 60:6  <b>bad</b> [2] - 80:4, 142:4  <b>balance</b> [28] - 135:23, 136:17, 138:9, 138:23, 147:21, 152:2, 153:25, 158:20, 158:24, 159:22, 160:9, 161:6, 161:13, 161:20, 162:23, 166:17, 167:15, 167:22, 168:2, 168:3, 168:6, 168:12, 168:19, 169:13, 170:8, 170:18, 171:19, 171:25  <b>Bank</b> [1] - 63:5  <b>bank</b> [40] - 63:20, 64:21, 64:25, 66:15, 66:18, 66:23, 67:3, 67:6, 67:18, 69:9, 72:19, 77:4, 80:18, 80:24, 92:12, 93:17, 93:18, 93:24, 146:6, 148:2, 148:5, 149:5, 149:11, 149:12, 149:15, 149:23, 149:24, 150:19, 150:20, 151:17, 153:5, 153:8, 155:11, 156:4, 156:5, 156:6, 157:8, 166:11, 170:13, 204:9  <b>banks</b> [1] - 67:15  <b>based</b> [13] - 60:24, 64:4, 109:12, 111:6, 126:2, 176:3, 178:11, 179:24, 184:14, 184:17, 199:2, 200:14, 200:23  <b>basic</b> [1] - 146:6  <b>basically</b> [1] - 75:14  <b>basing</b> [1] - 178:23  <b>basis</b> [5] - 71:23, 86:15, 179:22, 184:11, 200:9  <b>basket</b> [1] - 142:3  <b>Bates</b> [11] - 62:12, 62:18, 63:6, 104:22, 173:13, 173:15, 178:21, 179:10, 180:7, 180:20, 204:10  <b>becomes</b> [1] - 165:24  <b>before</b> [36] - 56:23, 58:11, 58:13, 59:16, 59:21, 60:13, 62:17, 65:6, 66:10, 71:7, 71:20, 72:9, 76:17, 79:5, 80:11, 83:19, 85:20, 89:3, 102:2, 106:8, 106:12, 118:17, 134:11, 136:3, 137:21, 150:25, 151:2, 152:5, 158:17, 160:6, 186:17, 189:2, 196:2, 196:20, 197:20, 203:18  <b>began</b> [5] - 106:10, 106:12, 106:25, 107:3, 118:7</p>	<p><b>begin</b> [2] - 107:7, 121:10  <b>beginning</b> [2] - 71:18, 193:8  <b>behalf</b> [6] - 68:14, 107:22, 193:4, 194:5, 195:4  <b>Beinstock</b> [1] - 141:23  <b>believe</b> [24] - 61:15, 64:22, 65:17, 67:17, 93:4, 93:14, 97:4, 97:15, 97:19, 99:11, 99:12, 108:25, 125:22, 125:23, 126:11, 126:12, 127:9, 131:11, 160:9, 164:12, 174:9, 178:25, 180:2, 191:17  <b>believed</b> [2] - 114:9, 152:17  <b>belongs</b> [1] - 102:2  <b>beneath</b> [1] - 94:11  <b>between</b> [9] - 58:6, 73:5, 74:2, 76:23, 76:24, 76:25, 112:24, 119:13, 163:15  <b>Bienstock</b> [5] - 142:21, 142:23, 143:5, 166:23  <b>Bigel</b> [8] - 63:5, 141:8, 142:2, 142:10, 142:14, 142:18, 143:2, 145:23  <b>bigger</b> [1] - 89:21  <b>bill</b> [2] - 181:19, 181:20  <b>bit</b> [5] - 85:10, 88:11, 91:14, 152:5, 163:5  <b>biweekly</b> [1] - 155:22  <b>blank</b> [3] - 96:24, 96:25, 164:23  <b>blood</b> [1] - 205:16  <b>blue</b> [1] - 155:19  <b>blur</b> [1] - 88:17  <b>Board</b> [1] - 179:6  <b>bookkeeping</b> [1] - 166:4  <b>both</b> [23] - 68:18, 73:8, 73:10, 73:11, 73:21, 81:11, 105:25, 113:14, 113:20, 113:24, 113:25, 114:10, 115:5, 115:16, 124:8, 133:2, 145:10, 145:14, 172:24, 174:4, 188:21, 195:23, 199:15  <b>bottom</b> [11] - 64:14, 92:18, 108:20, 109:5, 128:9, 137:19, 146:20, 146:22, 147:2, 164:3, 180:21  <b>bow</b> [1] - 89:7  <b>break</b> [4] - 92:8, 100:21, 160:3, 191:14  <b>breakdown</b> [3] - 107:11, 107:12, 107:14  <b>brightest</b> [2] - 134:17, 199:11  <b>bring</b> [1] - 193:16</p>	<p><b>brings</b> [1] - 71:11  <b>broader</b> [1] - 125:10  <b>Bronx</b> [2] - 118:12, 119:16  <b>Brooklyn</b> [3] - 56:23, 57:5, 57:11  <b>brought</b> [5] - 145:12, 145:13, 155:24, 180:9, 180:12  <b>budget</b> [1] - 154:11  <b>budgeting</b> [1] - 154:10  <b>build</b> [1] - 117:18  <b>bulb</b> [1] - 199:12  <b>bunch</b> [2] - 134:17, 199:12  <b>busier</b> [1] - 85:10  <b>business</b> [3] - 117:19, 144:10, 159:12  <b>busy</b> [1] - 118:4  <b>BY</b> [5] - 57:6, 57:11, 57:17, 59:6, 204:20</p>	<p>73:16, 73:18, 75:16, 75:20, 76:7, 84:7, 84:8, 90:3, 105:25, 113:11, 114:9, 115:11, 119:6, 119:21, 124:24, 125:21, 126:3, 126:5, 126:21, 128:5, 129:4, 129:23, 131:10, 131:19, 132:21, 132:22, 135:24, 145:12, 145:13, 145:16, 175:22, 176:16, 182:8, 183:21, 187:9, 187:10, 187:25, 191:18, 191:24, 193:2, 193:9, 195:6, 198:4, 198:11, 198:13, 199:19, 199:20, 199:22, 199:25, 200:10, 201:8, 201:15, 201:20  <b>cases</b> [38] - 74:7, 78:8, 82:20, 84:5, 84:6, 84:22, 89:23, 90:4, 90:9, 90:20, 90:25, 113:17, 114:25, 116:22, 116:24, 118:3, 119:19, 120:25, 121:19, 122:5, 122:14, 142:19, 159:3, 159:16, 175:12, 175:15, 179:24, 193:25, 194:5, 194:22, 195:7, 195:12, 195:18, 197:19, 197:22, 198:5, 198:7, 199:18  <b>catch</b> [1] - 138:5  <b>categories</b> [1] - 87:5  <b>cease</b> [1] - 116:16  <b>certain</b> [4] - 98:23, 99:16, 159:2, 168:2  <b>certificate</b> [2] - 190:20, 194:11  <b>certification</b> [1] - 58:8  <b>certified</b> [1] - 190:13  <b>certify</b> [3] - 203:4, 205:9, 205:14  <b>CERTIFY</b> [1] - 203:8  <b>cetera</b> [1] - 96:7  <b>chance</b> [1] - 140:15  <b>change</b> [3] - 98:8, 101:23, 163:3  <b>changed</b> [6] - 90:6, 102:25, 123:19, 147:7, 150:13, 150:25  <b>changes</b> [6] - 146:14, 146:15, 147:5, 147:10, 147:18, 158:5  <b>changing</b> [1] - 151:3  <b>charge</b> [2] - 114:4, 181:24  <b>charts</b> [1] - 154:15  <b>check</b> [11] - 114:15, 124:10, 125:18, 126:15, 126:17, 155:16, 163:11,</p>
<b>C</b>			
<p><b>C3</b> [1] - 179:18  <b>calculate</b> [1] - 154:19  <b>calculated</b> [1] - 64:10  <b>calculates</b> [3] - 64:8, 64:9, 170:25  <b>calculating</b> [1] - 172:8  <b>calculations</b> [2] - 135:15, 137:2  <b>calendar</b> [1] - 84:10  <b>call</b> [7] - 155:17, 155:18, 155:19, 163:12, 171:10, 195:16, 195:17  <b>called</b> [7] - 59:2, 66:21, 163:6, 163:7, 175:14, 175:15  <b>calling</b> [1] - 162:15  <b>calls</b> [3] - 155:9, 162:13, 162:14  <b>CAMBA</b> [1] - 57:9  <b>came</b> [10] - 69:15, 89:21, 89:24, 90:9, 90:12, 90:16, 90:20, 164:14, 194:19, 197:9  <b>can you</b> [4] - 62:19, 104:24, 132:5, 192:4  <b>can't</b> [15] - 60:15, 60:22, 86:9, 88:4, 107:24, 113:9, 120:22, 126:22, 129:25, 130:7, 135:11, 139:13, 139:14, 165:16, 165:21  <b>cannot</b> [2] - 122:12, 123:3  <b>Case</b> [1] - 56:6  <b>case</b> [64] - 59:23, 61:14, 61:15, 62:4, 64:23, 69:19, 71:13, 73:13, 73:15,</p>			

<p>167:4, 196:21, 196:24, 201:23</p> <p><b>checked</b> [1] - 61:16</p> <p><b>Church</b> [1] - 59:12</p> <p><b>circles</b> [1] - 100:7</p> <p><b>circumstances</b> [3] - 153:9, 153:13, 159:2</p> <p><b>City</b> [2] - 143:25, 171:4</p> <p><b>civil</b> [15] - 73:19, 74:2, 74:7, 75:20, 75:24, 76:4, 76:7, 117:8, 145:3, 180:24, 183:11, 188:4, 190:3, 190:7, 199:25</p> <p><b>CIVIL</b> [1] - 56:3</p> <p><b>Civil</b> [1] - 56:21</p> <p><b>civilly</b> [1] - 105:14</p> <p><b>claim</b> [1] - 201:7</p> <p><b>claimed</b> [6] - 69:11, 92:13, 148:8, 153:20, 171:20, 201:3</p> <p><b>claims</b> [1] - 188:19</p> <p><b>Clara</b> [5] - 69:20, 72:23, 103:23, 104:2, 104:3</p> <p><b>clarified</b> [1] - 102:23</p> <p><b>clarify</b> [2] - 68:25, 69:4</p> <p><b>clarity</b> [1] - 161:12</p> <p><b>clause</b> [4] - 101:25, 102:5, 102:13, 102:16</p> <p><b>clear</b> [6] - 76:18, 98:16, 121:12, 147:8, 151:22, 169:12</p> <p><b>CLERK</b> [1] - 57:7</p> <p><b>clerk</b> [1] - 113:23</p> <p><b>clerks</b> [1] - 123:21</p> <p><b>click</b> [1] - 144:22</p> <p><b>client</b> [22] - 73:17, 73:19, 73:23, 84:7, 85:24, 90:2, 90:4, 113:19, 115:11, 117:2, 124:17, 124:18, 125:11, 126:9, 130:13, 133:3, 133:4, 181:25, 182:4, 194:10, 198:2, 201:3</p> <p><b>client's</b> [4] - 63:20, 89:23, 198:15, 199:5</p> <p><b>clients</b> [11] - 82:22, 83:2, 88:7, 89:11, 89:20, 90:16, 90:19, 177:8, 181:19, 181:21, 198:8</p> <p><b>clinical</b> [1] - 142:5</p> <p><b>clinically</b> [1] - 141:21</p> <p><b>closed</b> [1] - 152:13</p> <p><b>co</b> [2] - 57:9, 165:21</p> <p><b>co-Counsel</b> [1] - 57:9</p> <p><b>co-judgment</b> [1] - 165:21</p> <p><b>collect</b> [36] - 61:7, 67:10, 67:22, 67:25, 70:4, 73:19, 74:15, 75:25, 76:8, 86:16, 108:9, 110:13, 110:16, 121:5, 125:4, 132:13,</p>	<p>134:7, 135:21, 139:10, 140:8, 140:10, 145:17, 145:18, 154:24, 159:6, 159:13, 159:15, 159:24, 165:9, 175:4, 180:25, 181:12, 183:19, 191:22, 195:24, 196:21</p> <p><b>collected</b> [16] - 70:16, 71:23, 133:5, 133:7, 133:20, 133:22, 153:18, 159:4, 163:2, 164:17, 164:20, 165:20, 175:22, 181:3, 182:2, 182:15</p> <p><b>collecting</b> [3] - 74:19, 139:7, 146:3</p> <p><b>collection</b> [19] - 73:21, 74:10, 76:5, 77:20, 105:3, 108:11, 119:7, 120:13, 122:2, 122:3, 143:17, 159:12, 172:16, 176:9, 178:24, 182:19, 182:22, 190:23, 195:3</p> <p><b>collections</b> [8] - 110:4, 110:6, 110:7, 114:13, 121:25, 144:19, 188:3, 197:17</p> <p><b>Collin</b> [7] - 70:22, 71:7, 71:16, 72:5, 74:23, 76:14, 136:11</p> <p><b>coming</b> [1] - 59:15</p> <p><b>commence</b> [1] - 108:18</p> <p><b>common</b> [3] - 111:17, 123:14, 123:15</p> <p><b>communicate</b> [1] - 195:8</p> <p><b>communication</b> [1] - 149:18</p> <p><b>communications</b> [10] - 83:2, 88:6, 107:22, 107:25, 108:2, 192:19, 192:20, 192:25, 193:3, 195:13</p> <p><b>company</b> [15] - 107:23, 108:4, 118:10, 118:14, 119:11, 189:3, 189:5, 192:15, 192:22, 192:24, 193:4, 193:19, 193:21, 195:10, 195:14</p> <p><b>complaint</b> [9] - 86:19, 132:7, 132:9, 132:12, 173:6, 173:8, 184:20, 188:7, 188:16</p> <p><b>Complaint</b> [1] - 204:12</p> <p><b>complaints</b> [1] - 79:24</p> <p><b>completed</b> [2] - 122:21, 127:7</p> <p><b>computer</b> [28] - 71:11, 71:21, 73:5, 73:10, 74:22, 86:14, 92:14, 95:21, 96:4, 109:12, 115:18, 125:19, 126:24, 127:3, 136:22,</p>	<p>151:11, 151:13, 151:19, 152:20, 154:23, 155:7, 160:14, 177:3, 177:15, 185:7, 185:13, 185:17, 199:3</p> <p><b>computers</b> [1] - 126:18</p> <p><b>concerned</b> [1] - 141:21</p> <p><b>confused</b> [1] - 170:12</p> <p><b>confuses</b> [1] - 170:11</p> <p><b>consciousness</b> [1] - 183:21</p> <p><b>considered</b> [1] - 181:22</p> <p><b>constructed</b> [1] - 102:17</p> <p><b>consumer</b> [19] - 93:13, 93:16, 93:20, 93:24, 96:11, 114:21, 114:22, 135:22, 149:15, 149:19, 149:24, 150:20, 153:22, 155:9, 156:5, 162:19, 163:6, 183:17, 186:25</p> <p><b>consumer's</b> [2] - 186:20, 187:2</p> <p><b>consumers</b> [1] - 88:7</p> <p><b>contact</b> [3] - 156:7, 157:3, 194:21</p> <p><b>contemporaneous</b> [2] - 130:14, 197:11</p> <p><b>contingency</b> [1] - 181:22</p> <p><b>continue</b> [2] - 164:13, 192:10</p> <p><b>CONTINUED</b> [1] - 56:16</p> <p><b>continuing</b> [1] - 95:6</p> <p><b>contract</b> [3] - 176:3, 177:22, 179:25</p> <p><b>contracts</b> [1] - 106:2</p> <p><b>contractural</b> [1] - 175:17</p> <p><b>control</b> [2] - 131:18, 135:2</p> <p><b>convey</b> [2] - 156:14, 156:15</p> <p><b>copied</b> [1] - 130:12</p> <p><b>copies</b> [1] - 127:5</p> <p><b>copy</b> [18] - 58:14, 58:17, 93:19, 124:15, 124:22, 125:3, 125:12, 127:19, 128:18, 129:19, 188:12, 190:23, 191:8, 193:16, 195:22, 196:6, 196:10, 196:15</p> <p><b>copying</b> [1] - 171:12</p> <p><b>corporate</b> [2] - 107:20, 107:25</p> <p><b>correct</b> [150] - 64:6, 65:5, 65:10, 65:13, 66:2, 66:3, 66:12, 66:13, 66:16, 66:17, 67:20, 68:15, 70:11, 70:13, 71:10, 72:12, 72:13, 72:17, 75:23, 76:2, 77:18, 77:21, 77:22, 78:9, 83:13, 84:17,</p>	<p>92:16, 93:2, 93:6, 93:7, 93:10, 93:25, 94:2, 94:4, 95:16, 95:17, 95:18, 95:24, 95:25, 96:3, 96:5, 96:9, 96:13, 97:23, 98:5, 98:25, 99:19, 101:5, 101:6, 101:8, 101:12, 101:13, 103:12, 105:4, 107:3, 107:16, 108:8, 108:11, 109:19, 110:12, 111:19, 112:5, 112:8, 113:13, 114:23, 120:20, 121:6, 121:11, 121:17, 121:20, 123:7, 124:13, 128:10, 128:11, 128:19, 129:18, 131:2, 131:20, 132:14, 133:10, 135:4, 135:5, 136:7, 136:14, 136:18, 137:24, 138:19, 138:21, 139:6, 139:11, 147:19, 147:22, 148:8, 148:24, 149:4, 149:7, 149:16, 150:2, 150:3, 150:8, 150:11, 150:23, 151:10, 152:25, 153:11, 153:22, 153:23, 157:15, 157:22, 158:11, 158:21, 160:12, 160:22, 160:24, 161:14, 162:7, 162:11, 164:4, 164:5, 164:7, 164:8, 170:8, 172:5, 178:2, 179:19, 179:25, 180:16, 182:2, 182:16, 182:24, 182:25, 183:14, 184:22, 185:5, 185:14, 185:19, 186:19, 188:9, 188:13, 189:12, 190:10, 191:2, 191:9, 193:5, 193:6, 195:5, 197:14, 200:3, 203:9</p> <p><b>corrected</b> [1] - 153:15</p> <p><b>correctly</b> [2] - 143:9, 148:18</p> <p><b>costs</b> [8] - 94:20, 95:17, 96:23, 102:7, 102:14, 102:17, 174:23, 181:14</p> <p><b>Counsel</b> [2] - 57:9, 204:17</p> <p><b>counsel</b> [3] - 58:6, 58:17, 119:18</p> <p><b>COUNTY</b> [1] - 205:5</p> <p><b>couple</b> [2] - 81:25, 143:8</p> <p><b>course</b> [2] - 78:5, 182:9</p> <p><b>court</b> [47] - 74:2, 74:6, 76:8, 78:3, 82:22, 83:9, 83:13, 83:17, 83:23, 84:3, 85:19, 111:25, 112:10, 112:20, 113:6, 113:14, 113:18, 113:22, 114:23, 115:10, 120:9, 123:13,</p>
--	--	--	---

<p>123:21, 125:18, 125:20, 126:10, 126:20, 126:24, 129:12, 145:3, 145:4, 145:11, 145:13, 174:24, 181:14, 185:8, 185:13, 188:4, 190:3, 190:7, 196:11, 197:2, 199:3, 199:25, 200:5, 200:7</p> <p><b>COURT</b> [1] - 56:2</p> <p><b>Court</b> [3] - 56:22, 57:5, 58:13</p> <p><b>court's</b> [1] - 126:15</p> <p><b>courthouse</b> [2] - 126:17, 185:17</p> <p><b>courts</b> [4] - 83:3, 126:19, 126:23</p> <p><b>cover</b> [1] - 156:25</p> <p><b>covers</b> [1] - 83:6</p> <p><b>CPLR</b> [1] - 93:6</p> <p><b>crazy</b> [1] - 88:21</p> <p><b>created</b> [1] - 94:4</p> <p><b>credit</b> [2] - 149:25, 152:23</p> <p><b>credited</b> [1] - 70:3</p> <p><b>creditor's</b> [1] - 156:8</p> <p><b>credits</b> [1] - 161:7</p> <p><b>cue</b> [1] - 74:22</p> <p><b>current</b> [4] - 135:23, 138:23, 153:25, 161:5</p> <p><b>custody</b> [2] - 131:17, 134:25</p> <p><b>cutting</b> [1] - 171:13</p>	<p>105:19, 105:22, 106:5, 106:16, 117:7, 125:4, 133:15, 134:7, 134:8, 135:19, 159:12, 172:18, 174:5, 182:2, 183:19, 193:2, 199:23</p> <p><b>debtor</b> [14] - 69:19, 80:11, 81:10, 93:2, 93:3, 137:7, 156:22, 156:25, 157:4, 163:16, 163:17, 165:20, 165:21, 167:6</p> <p><b>debtor's</b> [1] - 163:24</p> <p><b>debtors</b> [10] - 73:11, 83:3, 115:16, 124:8, 124:16, 139:16, 141:2, 141:3, 144:18, 146:24</p> <p><b>debts</b> [1] - 108:9</p> <p><b>December</b> [3] - 192:11, 201:12, 205:20</p> <p><b>decide</b> [1] - 72:22</p> <p><b>decided</b> [2] - 89:20, 118:3</p> <p><b>deciding</b> [1] - 71:8</p> <p><b>decision</b> [5] - 72:10, 72:14, 72:25, 117:11, 197:15</p> <p><b>decisions</b> [2] - 120:11, 120:12</p> <p><b>decreasing</b> [3] - 83:20, 170:8, 170:18</p> <p><b>deem</b> [1] - 174:25</p> <p><b>default</b> [2] - 175:21, 180:11</p> <p><b>defendant</b> [2] - 123:9, 174:20</p> <p><b>defendants</b> [6] - 113:4, 114:6, 114:16, 124:23, 190:14, 190:18</p> <p><b>DEFENDANTS</b> [1] - 56:11</p> <p><b>Defendants</b> [2] - 56:17, 57:14</p> <p><b>defending</b> [1] - 180:11</p> <p><b>definitely</b> [2] - 96:18, 129:16</p> <p><b>definitively</b> [1] - 115:24</p> <p><b>deleted</b> [1] - 102:10</p> <p><b>delineation</b> [2] - 113:10, 123:18</p> <p><b>demand</b> [13] - 78:16, 78:24, 79:2, 79:3, 79:6, 79:11, 79:12, 79:23, 79:25, 86:23, 91:7, 175:3, 175:6</p> <p><b>demanding</b> [1] - 179:22</p> <p><b>demonstrates</b> [1] - 133:15</p> <p><b>deny</b> [2] - 70:24, 71:4</p> <p><b>department</b> [1] - 171:4</p> <p><b>departure</b> [1] - 167:8</p>	<p><b>depending</b> [4] - 143:6, 153:9, 153:12, 182:8</p> <p><b>deposition</b> [10] - 58:8, 58:9, 58:14, 59:22, 60:20, 79:7, 85:12, 109:16, 116:7, 192:9</p> <p><b>DEPOSITION</b> [1] - 56:16</p> <p><b>depositions</b> [1] - 107:19</p> <p><b>DESCRIPTION</b> [1] - 204:7</p> <p><b>destroy</b> [1] - 130:8</p> <p><b>destroyed</b> [1] - 129:24</p> <p><b>details</b> [1] - 89:3</p> <p><b>determination</b> [6] - 75:21, 177:25, 185:20, 197:3, 197:4, 198:24</p> <p><b>determine</b> [13] - 71:25, 106:14, 117:7, 119:6, 120:15, 120:18, 122:22, 135:13, 136:6, 136:23, 176:11, 176:24, 177:16</p> <p><b>determined</b> [2] - 105:16, 176:15</p> <p><b>determines</b> [2] - 136:12, 136:16</p> <p><b>Development</b> [1] - 118:12</p> <p><b>device</b> [2] - 70:15, 164:22</p> <p><b>devices</b> [4] - 68:7, 70:9, 80:12, 164:9</p> <p><b>did it</b> [3] - 75:8, 75:11, 139:12</p> <p><b>did she</b> [2] - 119:24, 120:3</p> <p><b>did you</b> [11] - 64:16, 76:7, 85:25, 90:20, 97:8, 98:8, 125:2, 142:22, 153:24, 192:17, 197:4</p> <p><b>different</b> [8] - 109:21, 116:10, 116:11, 137:25, 140:9, 145:18, 163:5, 165:23</p> <p><b>differentiate</b> [1] - 163:14</p> <p><b>difficult</b> [2] - 154:5, 154:19</p> <p><b>direct</b> [2] - 120:17, 137:15</p> <p><b>directed</b> [1] - 72:16</p> <p><b>direction</b> [1] - 75:19</p> <p><b>directs</b> [1] - 76:15</p> <p><b>disagree</b> [1] - 102:3</p> <p><b>disbursements</b> [2] - 174:23, 180:8</p> <p><b>discontinuance</b> [3] - 132:20, 184:9, 190:17</p> <p><b>Discontinuance</b> [4] - 190:3, 190:24, 191:9, 204:15</p> <p><b>discontinued</b> [4] -</p>	<p>132:16, 132:24, 132:25, 190:10</p> <p><b>discretion</b> [1] - 188:22</p> <p><b>discussion</b> [1] - 62:16</p> <p><b>dispute</b> [2] - 81:9, 144:21</p> <p><b>disputes</b> [1] - 81:12</p> <p><b>distinguish</b> [3] - 73:4, 73:25, 110:5</p> <p><b>DISTRICT</b> [2] - 56:2, 56:2</p> <p><b>DIVISION</b> [1] - 56:3</p> <p><b>divorce</b> [1] - 88:21</p> <p><b>do they</b> [1] - 196:10</p> <p><b>do you</b> [67] - 59:11, 59:18, 61:9, 67:4, 67:9, 67:14, 69:17, 73:14, 76:19, 78:13, 79:15, 79:19, 80:8, 80:13, 81:8, 81:11, 81:15, 81:22, 82:18, 83:7, 84:5, 84:11, 84:20, 85:6, 86:12, 86:24, 87:20, 88:8, 91:25, 94:8, 97:4, 107:4, 108:13, 111:3, 111:4, 112:22, 116:23, 117:16, 118:16, 118:20, 118:25, 120:5, 124:22, 125:20, 127:10, 127:18, 128:14, 129:18, 135:21, 145:24, 149:10, 156:6, 169:4, 169:5, 169:16, 170:24, 174:11, 174:25, 175:9, 176:5, 181:19, 188:24, 191:17, 194:16, 195:7, 201:16, 201:20</p> <p><b>docs</b> [1] - 204:11</p> <p><b>document</b> [29] - 64:14, 66:21, 97:4, 97:5, 100:8, 100:9, 104:5, 104:18, 107:5, 107:10, 109:2, 129:20, 130:24, 131:18, 131:25, 132:6, 135:22, 137:17, 138:4, 138:9, 138:25, 155:5, 157:14, 157:17, 165:7, 178:17, 187:19, 189:9, 189:22</p> <p><b>DOCUMENTS</b> [2] - 204:23, 204:24</p> <p><b>Documents</b> [1] - 204:8</p> <p><b>documents</b> [34] - 62:18, 62:25, 63:12, 74:4, 75:15, 76:13, 78:13, 82:7, 82:13, 91:5, 91:16, 92:3, 109:13, 125:25, 128:23, 128:24, 130:6, 130:22, 131:3, 131:13, 134:25, 151:17, 166:10, 184:15, 186:19, 186:24, 187:3, 187:7, 187:24, 188:6, 193:15, 195:22, 197:10, 198:22</p>
<b>D</b>			
<p><b>damages</b> [3] - 174:20, 179:15, 179:17</p> <p><b>data</b> [2] - 98:17, 103:8</p> <p><b>date</b> [33] - 63:14, 64:17, 66:5, 98:23, 99:16, 100:23, 102:12, 103:10, 104:20, 105:21, 106:6, 107:6, 113:6, 132:3, 138:13, 143:15, 149:2, 149:17, 153:7, 158:8, 160:11, 161:2, 161:6, 168:2, 168:18, 170:15, 171:22, 172:10, 178:19, 182:21, 187:21, 189:24</p> <p><b>DATE</b> [1] - 56:13</p> <p><b>dated</b> [1] - 61:21</p> <p><b>dates</b> [1] - 172:6</p> <p><b>daughter</b> [1] - 118:24</p> <p><b>day</b> [6] - 65:7, 76:20, 82:19, 151:24, 203:19, 205:20</p> <p><b>days</b> [2] - 58:16, 86:22</p> <p><b>dead</b> [1] - 130:7</p> <p><b>deal</b> [1] - 119:20</p> <p><b>debt</b> [19] - 76:8, 81:10,</p>			

<p><b>Doe</b> [3] - 164:25, 165:3, 165:5</p> <p><b>does it</b> [5] - 93:15, 128:8, 164:11, 164:16, 166:22</p> <p><b>does that</b> [9] - 84:24, 93:12, 99:5, 101:14, 102:10, 158:16, 160:13, 190:2, 195:10</p> <p><b>does this</b> [1] - 138:8</p> <p><b>doesn't</b> [4] - 145:20, 149:25, 162:8, 182:4</p> <p><b>dollar</b> [5] - 158:13, 160:13, 168:8, 168:23, 175:2</p> <p><b>dollars</b> [29] - 94:20, 96:24, 99:4, 99:5, 99:15, 99:17, 99:18, 101:7, 101:9, 102:15, 103:11, 158:16, 163:3, 167:22, 168:25, 169:3, 169:4, 169:5, 169:19, 169:22, 170:3, 170:5, 170:21, 170:22, 172:2, 174:21, 175:7, 179:22, 183:3</p> <p><b>down</b> [11] - 91:14, 95:10, 100:11, 100:21, 126:23, 136:25, 140:17, 140:20, 174:18, 195:21, 195:25</p> <p><b>dozen</b> [2] - 74:13, 194:3</p> <p><b>due</b> [67] - 64:3, 64:5, 66:5, 69:11, 86:20, 87:2, 87:7, 87:8, 87:9, 92:13, 94:12, 94:16, 94:22, 94:23, 94:24, 94:25, 95:3, 96:25, 97:5, 97:7, 99:22, 101:11, 101:15, 101:16, 101:24, 102:15, 104:4, 136:2, 136:17, 136:23, 137:3, 138:9, 138:14, 138:23, 139:5, 140:11, 147:21, 148:8, 148:22, 148:25, 149:20, 150:7, 150:21, 151:8, 152:2, 152:7, 152:10, 152:13, 152:21, 153:6, 153:20, 153:25, 154:3, 160:9, 161:20, 162:9, 165:14, 166:17, 168:12, 168:19, 171:18, 171:20, 171:25, 172:22, 172:25, 174:14, 191:18</p> <p><b>duly</b> [3] - 59:3, 203:5, 205:11</p>	<p>61:11, 61:14, 61:15, 62:2, 88:6, 201:13</p> <p><b>earlier</b> [2] - 197:11, 199:7</p> <p><b>easier</b> [1] - 140:22</p> <p><b>effect</b> [2] - 58:12, 58:15</p> <p><b>efficient</b> [1] - 83:24</p> <p><b>eggs</b> [1] - 142:3</p> <p><b>eight</b> [1] - 85:17</p> <p><b>ELIZABETH</b> [2] - 205:7, 205:23</p> <p><b>Elizabeth</b> [1] - 56:24</p> <p><b>else's</b> [1] - 83:24</p> <p><b>employed</b> [1] - 67:18</p> <p><b>employer</b> [2] - 72:20, 137:7</p> <p><b>employment</b> [1] - 137:12</p> <p><b>end</b> [4] - 71:18, 137:22, 142:24, 169:4</p> <p><b>enforcement</b> [16] - 68:7, 70:8, 70:15, 71:9, 72:2, 72:7, 72:11, 72:15, 73:2, 76:15, 79:16, 80:12, 91:7, 117:9, 119:8, 136:13</p> <p><b>engage</b> [3] - 73:20, 82:25, 122:4</p> <p><b>engaged</b> [1] - 122:4</p> <p><b>engaging</b> [1] - 113:21</p> <p><b>English</b> [1] - 173:5</p> <p><b>entail</b> [1] - 84:24</p> <p><b>enter</b> [4] - 75:18, 84:9, 117:4, 118:2</p> <p><b>entered</b> [16] - 73:13, 95:9, 95:14, 98:23, 100:23, 113:24, 114:5, 114:8, 114:25, 119:7, 145:6, 148:14, 176:16, 185:9, 196:17</p> <p><b>entering</b> [2] - 116:22, 116:23</p> <p><b>enters</b> [1] - 115:18</p> <p><b>entire</b> [2] - 144:19, 169:14</p> <p><b>entirely</b> [3] - 103:18, 133:17, 133:18</p> <p><b>entity</b> [1] - 67:11</p> <p><b>entry</b> [10] - 78:19, 81:21, 81:22, 82:5, 102:12, 109:8, 128:12, 138:13, 164:21, 174:3</p> <p><b>error</b> [8] - 95:21, 96:16, 97:21, 98:3, 98:7, 98:11, 98:12, 152:17</p> <p><b>especially</b> [1] - 117:15</p> <p><b>ESQ</b> [4] - 57:6, 57:11, 57:13, 57:17</p> <p><b>essence</b> [1] - 95:13</p> <p><b>established</b> [1] - 96:12</p> <p><b>Estate</b> [1] - 179:6</p> <p><b>estimate</b> [1] - 85:19</p> <p><b>et</b> [1] - 96:7</p>	<p><b>Evans</b> [2] - 189:15</p> <p><b>every</b> [5] - 148:4, 167:19, 175:3, 175:18, 176:8</p> <p><b>everything</b> [2] - 88:24, 98:13</p> <p><b>evict</b> [3] - 110:11, 111:3, 122:12</p> <p><b>evicted</b> [2] - 121:2, 122:18</p> <p><b>evicting</b> [1] - 121:10</p> <p><b>evidence</b> [2] - 126:3, 128:16</p> <p><b>exact</b> [3] - 104:9, 113:9, 123:17</p> <p><b>exactly</b> [8] - 60:17, 107:9, 113:15, 118:18, 135:10, 142:16, 156:23, 186:5</p> <p><b>examination</b> [2] - 205:10, 205:12</p> <p><b>EXAMINATION</b> [2] - 59:6, 204:20</p> <p><b>Examination</b> [1] - 202:3</p> <p><b>examined</b> [1] - 59:5</p> <p><b>example</b> [8] - 86:16, 86:17, 140:17, 162:17, 165:19, 168:22, 169:11, 176:16</p> <p><b>examples</b> [1] - 86:18</p> <p><b>except</b> [3] - 58:21, 64:3, 152:14</p> <p><b>execute</b> [5] - 87:8, 136:9, 166:12, 166:15</p> <p><b>executed</b> [1] - 143:6</p> <p><b>executing</b> [1] - 136:7</p> <p><b>execution</b> [35] - 63:3, 67:20, 92:20, 92:21, 97:2, 97:8, 98:9, 104:9, 135:11, 135:12, 137:5, 137:23, 139:7, 139:22, 139:24, 139:25, 146:2, 147:23, 147:25, 148:3, 149:8, 156:19, 157:13, 158:23, 161:7, 163:23, 164:9, 164:21, 164:22, 164:25, 165:22, 170:14, 171:22, 172:11, 200:2</p> <p><b>executions</b> [10] - 65:2, 68:5, 74:23, 77:9, 97:22, 143:13, 143:14, 159:10, 165:17, 166:8</p> <p><b>exempt</b> [3] - 146:18, 146:19, 201:4</p> <p><b>exemption</b> [1] - 201:6</p> <p><b>exhibit</b> [1] - 62:11</p> <p><b>EXHIBIT</b> [2] - 204:6</p> <p><b>Exhibit 1</b> [25] - 63:23, 65:9, 69:8, 76:14, 92:11, 93:12, 93:22, 93:23, 106:13, 106:18, 108:19,</p>	<p>137:16, 138:6, 146:4, 146:7, 146:11, 147:3, 147:10, 147:11, 148:6, 148:12, 149:12, 149:14, 153:21, 186:6</p> <p><b>Exhibit 2</b> [14] - 63:24, 92:20, 93:8, 93:9, 94:3, 95:23, 96:16, 97:13, 98:2, 103:2, 156:18, 157:11, 157:12, 160:23</p> <p><b>Exhibit 3</b> [2] - 63:25, 64:2</p> <p><b>Exhibit 4</b> [10] - 104:19, 104:25, 106:20, 108:23, 145:21, 162:21, 162:23, 163:21, 164:16, 183:24</p> <p><b>Exhibit 5</b> [6] - 132:2, 172:16, 173:20, 173:24, 178:24, 183:12</p> <p><b>Exhibit 6</b> [1] - 178:18</p> <p><b>Exhibit 7</b> [1] - 187:20</p> <p><b>Exhibit 8</b> [3] - 189:23, 190:15, 190:19</p> <p><b>exhibit I</b> [1] - 62:18</p> <p><b>exhibits</b> [1] - 63:9</p> <p><b>EXHIBITS</b> [1] - 204:4</p> <p><b>Exhibits</b> [3] - 63:13, 63:17, 204:17</p> <p><b>existent</b> [1] - 191:23</p> <p><b>exists</b> [1] - 120:16</p> <p><b>expedite</b> [1] - 120:14</p> <p><b>expenses</b> [4] - 179:18, 180:17, 180:19, 181:20</p> <p><b>expensive</b> [2] - 154:6, 154:7</p> <p><b>experience</b> [4] - 111:21, 115:3, 115:9, 119:10</p> <p><b>expert</b> [1] - 134:16</p> <p><b>expiration</b> [1] - 105:16</p> <p><b>expire</b> [1] - 107:8</p> <p><b>expired</b> [1] - 106:15</p> <p><b>extent</b> [2] - 112:17, 122:3</p>
<b>F</b>			
<p><b>F/K/A</b> [2] - 56:10, 57:15</p> <p><b>face</b> [1] - 163:8</p> <p><b>fact</b> [12] - 66:4, 108:17, 152:9, 153:5, 165:8, 185:4, 185:10, 190:25, 191:7, 191:8, 196:22, 201:15</p> <p><b>factual</b> [2] - 103:15, 186:24</p> <p><b>factually</b> [1] - 186:22</p> <p><b>fair</b> [5] - 60:11, 60:25, 117:21, 147:13, 147:15</p> <p><b>fairly</b> [2] - 134:16, 134:18</p> <p><b>false</b> [2] - 190:11, 190:12</p> <p><b>far</b> [2] - 108:5, 154:10</p>			

<p><b>Father</b> [1] - 119:16  <b>fax</b> [2] - 197:24, 198:11  <b>FDCPA</b> [1] - 102:24  <b>FDPCA</b> [2] - 150:18, 151:6  <b>February</b> [3] - 116:2, 116:4, 116:14  <b>Federal</b> [1] - 56:21  <b>fee</b> [4] - 181:22, 181:23, 182:13, 182:14  <b>feel</b> [1] - 155:12  <b>fees</b> [29] - 64:9, 174:22, 175:3, 175:7, 175:9, 175:16, 175:20, 175:23, 176:5, 176:12, 176:17, 176:25, 177:7, 177:17, 177:21, 179:19, 179:23, 180:8, 180:17, 180:19, 181:8, 181:9, 181:20, 181:21, 182:3, 182:5, 182:6, 182:10, 182:23  <b>fell</b> [1] - 130:11  <b>few</b> [5] - 74:25, 80:3, 95:7, 124:2, 144:12  <b>fields</b> [2] - 96:6, 98:17  <b>fifteen</b> [3] - 81:24, 82:4, 84:13  <b>fifty</b> [5] - 63:22, 77:13, 85:23, 163:3, 167:22  <b>fifty-five</b> [1] - 167:22  <b>fifty-one</b> [1] - 63:22  <b>fifty-three</b> [1] - 163:3  <b>figure</b> [4] - 76:25, 154:18, 156:8, 186:7  <b>file</b> [55] - 73:19, 74:4, 75:11, 75:15, 76:4, 76:7, 77:20, 84:8, 87:6, 110:10, 110:15, 111:17, 112:4, 112:18, 113:20, 115:15, 115:20, 116:25, 117:8, 120:13, 125:17, 127:2, 130:6, 130:10, 130:13, 130:15, 132:8, 137:4, 152:13, 166:5, 175:3, 175:25, 176:8, 179:24, 180:24, 181:2, 181:12, 182:18, 182:21, 183:16, 184:24, 185:3, 186:20, 187:2, 187:13, 196:2, 196:6, 196:8, 196:11, 196:22, 197:5, 198:15, 199:25, 201:6  <b>filed</b> [18] - 71:15, 75:24, 102:24, 111:21, 112:12, 112:16, 121:4, 121:19, 151:6, 173:8, 183:11, 184:6, 184:8, 187:12, 188:3, 188:11, 190:3, 201:2  <b>files</b> [7] - 127:4, 187:4,</p>	<p>193:14, 195:20, 198:8, 198:9, 198:10  <b>filling</b> [5] - 58:7, 79:13, 181:9, 194:5, 195:24  <b>fill</b> [5] - 96:24, 149:6, 151:9, 151:12, 152:4  <b>filled</b> [2] - 151:6, 151:13  <b>fills</b> [2] - 96:4, 96:6  <b>final</b> [5] - 129:7, 129:8, 130:20, 185:21, 186:9  <b>find</b> [5] - 85:11, 113:22, 126:22, 162:10, 194:14  <b>finish</b> [1] - 177:13  <b>fired</b> [1] - 130:4  <b>firm</b> [18] - 68:15, 68:19, 70:24, 78:15, 88:19, 89:4, 103:16, 105:7, 107:4, 107:6, 112:3, 112:12, 114:3, 114:20, 116:13, 116:17, 121:12, 124:6  <b>firm's</b> [2] - 109:24, 183:5  <b>first</b> [23] - 59:3, 61:17, 61:19, 62:22, 63:22, 63:23, 64:11, 92:18, 114:24, 116:21, 117:22, 125:5, 137:8, 137:19, 141:16, 146:16, 156:12, 156:21, 164:15, 166:17, 179:4, 191:25, 203:5  <b>five</b> [18] - 74:15, 74:18, 74:20, 80:2, 83:21, 87:22, 119:13, 119:14, 136:4, 167:22, 170:20, 172:2, 174:21, 175:2, 175:7, 176:22, 179:22, 183:3  <b>FJ</b> [7] - 129:5, 129:6, 130:16, 130:17, 184:22, 199:7, 199:14  <b>Flatbush</b> [1] - 57:10  <b>folks</b> [1] - 120:25  <b>follow</b> [3] - 102:14, 119:19, 166:5  <b>follow-up</b> [1] - 119:19  <b>following</b> [1] - 180:19  <b>follows</b> [2] - 59:5, 164:18  <b>forbid</b> [1] - 197:24  <b>force</b> [2] - 58:15, 111:12  <b>foregoing</b> [1] - 203:8  <b>foremost</b> [1] - 116:21  <b>FORERO</b> [2] - 205:7, 205:23  <b>Forero</b> [1] - 56:24  <b>forever</b> [1] - 155:13  <b>forget</b> [1] - 115:25  <b>form</b> [15] - 58:21, 60:13, 95:23, 97:20, 103:6, 105:12, 105:14, 150:4, 156:6, 156:10, 157:7, 177:9, 179:3, 179:5, 201:7  <b>formal</b> [1] - 119:24</p>	<p><b>format</b> [1] - 98:3  <b>forms</b> [1] - 103:6  <b>forth</b> [8] - 65:2, 88:6, 96:8, 151:18, 159:10, 193:2, 195:8, 205:11  <b>forty</b> [2] - 86:22, 101:22  <b>forty-three</b> [1] - 101:22  <b>forward</b> [4] - 71:12, 74:10, 93:9, 98:13  <b>forwarded</b> [5] - 75:6, 93:13, 93:15, 93:24, 149:14  <b>forwards</b> [2] - 92:25, 156:5  <b>found</b> [1] - 130:2  <b>four</b> [3] - 96:22, 170:21, 170:23  <b>friends</b> [1] - 144:12  <b>front</b> [6] - 92:4, 92:6, 128:21, 134:24, 135:4, 184:15  <b>full</b> [8] - 133:5, 133:8, 133:15, 134:2, 134:3, 171:21, 172:9, 173:7  <b>FURTHER</b> [2] - 58:20, 203:8  <b>further</b> [2] - 174:24, 205:14</p>	<p><b>generated</b> [3] - 95:23, 157:14, 160:23  <b>generates</b> [1] - 158:23  <b>gentleman</b> [1] - 189:6  <b>gets</b> [4] - 137:6, 142:8, 149:14, 158:17  <b>gift</b> [1] - 194:11  <b>Gigante</b> [1] - 119:16  <b>give</b> [13] - 74:3, 79:9, 91:10, 91:17, 113:9, 117:4, 144:6, 152:22, 171:7, 171:8, 172:5, 195:17, 198:12  <b>given</b> [9] - 75:17, 75:18, 100:8, 108:21, 114:3, 115:11, 125:13, 203:10, 205:13  <b>gives</b> [2] - 106:21, 168:5  <b>God</b> [1] - 197:24  <b>goes</b> [10] - 63:2, 66:22, 67:2, 71:12, 71:24, 80:10, 135:14, 140:17, 148:15, 149:12  <b>good</b> [8] - 59:14, 80:4, 108:17, 134:13, 134:20, 194:10, 194:14, 201:11  <b>got</b> [23] - 61:22, 61:23, 73:15, 73:16, 73:18, 95:22, 114:13, 115:21, 122:15, 122:19, 124:4, 124:17, 130:13, 133:4, 154:21, 163:18, 164:12, 165:10, 165:12, 167:20, 194:10, 196:20, 197:4  <b>grab</b> [1] - 198:10  <b>Grace</b> [1] - 59:12  <b>graduated</b> [2] - 118:25, 119:3  <b>greater</b> [3] - 85:20, 140:14, 158:10  <b>guess</b> [7] - 63:4, 133:8, 137:8, 142:5, 155:21, 180:13, 195:7  <b>Gutman</b> [17] - 89:4, 89:24, 90:3, 90:4, 90:9, 109:20, 112:3, 112:8, 112:15, 121:18, 121:20, 141:16, 143:10, 143:16, 183:6, 183:8, 191:19  <b>Guttman</b> [2] - 90:12, 109:18  <b>guy</b> [7] - 126:22, 130:3, 134:17, 187:5, 194:18, 194:24  <b>guys</b> [1] - 194:24</p>
<b>G</b>			
<p><b>Garden</b> [1] - 74:9  <b>GARDENS</b> [4] - 56:9, 56:10, 57:15, 57:15  <b>Gardens</b> [1] - 108:7  <b>garnish</b> [1] - 156:2  <b>garnished</b> [4] - 69:22, 69:23, 70:2, 155:21  <b>garnishee</b> [7] - 92:21, 92:22, 93:4, 97:3, 97:22, 157:13, 158:24  <b>garnishing</b> [2] - 140:22, 155:10  <b>garnishment</b> [2] - 137:13, 148:2  <b>garnishments</b> [2] - 80:19, 91:9  <b>GARY</b> [5] - 56:9, 56:18, 57:14, 203:15  <b>Gary</b> [2] - 59:10, 195:18  <b>gave</b> [4] - 61:12, 62:5, 62:7, 203:6  <b>general</b> [3] - 60:16, 124:21, 159:11  <b>generally</b> [17] - 60:7, 67:9, 75:5, 84:24, 91:25, 92:4, 92:5, 117:10, 120:22, 126:14, 126:25, 141:4, 153:11, 166:18, 195:7, 197:18, 199:13</p>			
<b>H</b>			
<p><b>half</b> [2] - 181:18  <b>hand</b> [1] - 205:20</p>			

<p><b>handful</b> [1] - 90:15</p> <p><b>handled</b> [1] - 198:3</p> <p><b>hands</b> [1] - 90:6</p> <p><b>handwriting</b> [1] - 130:16</p> <p><b>handwritten</b> [1] - 186:2</p> <p><b>happen</b> [2] - 122:9, 170:24</p> <p><b>happened</b> [10] - 89:19, 125:21, 125:23, 125:24, 126:12, 129:25, 141:18, 155:14, 165:15, 167:7</p> <p><b>happening</b> [1] - 140:15</p> <p><b>happens</b> [2] - 86:15, 165:18</p> <p><b>hard</b> [1] - 144:13</p> <p><b>hats</b> [2] - 109:21, 117:19</p> <p><b>have you</b> [4] - 102:25, 188:25, 191:21, 193:8</p> <p><b>haven't</b> [2] - 123:25, 180:3</p> <p><b>he's</b> [3] - 182:10, 182:11</p> <p><b>head</b> [1] - 184:7</p> <p><b>headache</b> [1] - 166:4</p> <p><b>hear</b> [1] - 97:24</p> <p><b>hearing</b> [1] - 121:19</p> <p><b>held</b> [2] - 56:21, 62:16</p> <p><b>help</b> [1] - 61:3</p> <p><b>HEREBY</b> [1] - 58:5</p> <p><b>hereby</b> [2] - 203:4, 205:9</p> <p><b>herein</b> [1] - 58:7</p> <p><b>hereinbefore</b> [2] - 203:11, 205:11</p> <p><b>hereunto</b> [1] - 205:19</p> <p><b>high</b> [4] - 118:22, 118:24, 119:2, 119:4</p> <p><b>hindsight</b> [1] - 199:19</p> <p><b>hired</b> [5] - 115:2, 116:2, 118:2, 118:17, 181:12</p> <p><b>hiring</b> [1] - 182:18</p> <p><b>history</b> [2] - 171:8, 172:4</p> <p><b>hold</b> [1] - 138:2</p> <p><b>holders</b> [1] - 113:13</p> <p><b>hooked</b> [1] - 194:9</p> <p><b>hope</b> [1] - 110:17</p> <p><b>hour</b> [1] - 91:21</p> <p><b>housing</b> [16] - 74:6, 113:18, 118:10, 119:11, 125:17, 125:18, 125:20, 126:20, 126:23, 126:24, 145:4, 145:11, 145:13, 199:3, 200:5, 200:7</p> <p><b>how did</b> [1] - 183:2</p> <p><b>how do</b> [7] - 69:14, 104:13, 110:5, 127:16, 158:7, 185:24, 186:9</p> <p><b>how many</b> [18] - 74:8, 76:18, 76:21, 77:3, 77:9, 77:23, 78:10, 78:23, 81:14, 81:18, 81:22, 83:16, 90:8, 90:19,</p>	<p>101:18, 159:3, 193:22, 194:2</p> <p><b>how often</b> [1] - 75:4</p> <p><b>human</b> [1] - 152:17</p> <p><b>hundred</b> [19] - 101:22, 119:13, 119:14, 130:12, 163:3, 168:7, 168:8, 168:9, 169:4, 169:21, 170:3, 170:4, 170:21, 170:23, 174:21, 175:2, 175:7, 179:22, 183:3</p> <p><b>Huntington</b> [1] - 57:17</p> <p style="text-align: center;"><b>I</b></p> <p><b>identification</b> [10] - 63:14, 104:19, 131:23, 132:2, 178:15, 178:18, 187:17, 187:20, 189:20, 189:23</p> <p><b>identify</b> [4] - 62:19, 104:25, 132:5, 148:15</p> <p><b>illegal</b> [1] - 180:9</p> <p><b>imagine</b> [4] - 123:3, 165:16, 170:19, 170:22</p> <p><b>IN</b> [1] - 205:19</p> <p><b>inartful</b> [2] - 98:20, 100:18</p> <p><b>inartfully</b> [1] - 96:18</p> <p><b>INC</b> [3] - 56:10, 57:9, 57:16</p> <p><b>incline</b> [1] - 75:19</p> <p><b>include</b> [1] - 190:19</p> <p><b>included</b> [4] - 84:21, 130:25, 172:24, 172:25</p> <p><b>includes</b> [1] - 61:20</p> <p><b>including</b> [5] - 94:20, 95:17, 96:23, 102:7, 174:16</p> <p><b>income</b> [16] - 65:2, 67:19, 68:5, 74:23, 77:9, 104:9, 135:12, 137:5, 139:7, 143:13, 163:23, 164:21, 164:24, 165:17, 165:22, 166:8</p> <p><b>inconsistent</b> [1] - 140:13</p> <p><b>incorrect</b> [3] - 65:18, 69:11, 98:19</p> <p><b>incur</b> [1] - 182:5</p> <p><b>incurred</b> [3] - 180:20, 182:7, 182:23</p> <p><b>incurs</b> [2] - 182:10, 182:18</p> <p><b>independent</b> [1] - 184:17</p> <p><b>independently</b> [2] - 75:22, 184:13</p> <p><b>index</b> [13] - 65:20, 96:8, 126:21, 141:3, 143:4, 144:25, 145:2, 145:5, 145:7, 145:10, 145:14,</p>	<p>158:11, 165:10</p> <p><b>indicate</b> [6] - 106:13, 107:6, 115:19, 127:23, 128:17, 190:23</p> <p><b>indicated</b> [6] - 64:17, 69:10, 70:7, 166:20, 186:12, 186:14</p> <p><b>indicates</b> [2] - 130:15, 135:7</p> <p><b>indication</b> [1] - 196:25</p> <p><b>individual</b> [2] - 111:19, 194:17</p> <p><b>INFORMATION</b> [2] - 204:23, 204:24</p> <p><b>information</b> [40] - 62:22, 63:19, 64:12, 64:22, 64:25, 66:6, 66:11, 66:14, 66:22, 66:25, 67:4, 67:10, 67:14, 67:15, 68:3, 68:4, 69:9, 76:19, 76:23, 77:4, 80:17, 80:18, 84:9, 91:8, 92:2, 92:12, 93:19, 106:14, 115:18, 125:16, 137:16, 138:6, 144:6, 146:5, 148:5, 149:9, 156:3, 156:14, 157:12, 193:8</p> <p><b>informative</b> [1] - 106:18</p> <p><b>informed</b> [1] - 171:18</p> <p><b>initially</b> [3] - 73:15, 75:24, 144:4</p> <p><b>inputs</b> [1] - 103:8</p> <p><b>inquiry</b> [1] - 122:25</p> <p><b>insist</b> [2] - 124:22, 125:2</p> <p><b>instance</b> [5] - 137:6, 139:23, 155:6, 165:16, 199:17</p> <p><b>institution</b> [1] - 146:25</p> <p><b>instructed</b> [1] - 184:4</p> <p><b>intellectually</b> [1] - 68:20</p> <p><b>intelligent</b> [2] - 134:16, 134:18</p> <p><b>intend</b> [1] - 93:9</p> <p><b>intended</b> [1] - 93:23</p> <p><b>intentionally</b> [5] - 130:4, 130:5, 130:8, 186:18, 192:2</p> <p><b>interest</b> [59] - 64:8, 94:21, 94:25, 96:24, 99:4, 99:5, 99:6, 99:16, 99:17, 99:18, 99:23, 101:8, 101:9, 101:15, 101:24, 102:5, 102:8, 102:11, 133:25, 134:21, 135:9, 135:17, 135:19, 135:25, 138:12, 153:16, 158:14, 158:16, 158:18, 160:8, 160:10, 161:10, 161:16, 161:17, 161:18, 161:21, 162:16, 162:25, 168:10,</p>	<p>168:16, 168:19, 168:21, 168:24, 169:5, 169:7, 169:8, 169:10, 169:14, 169:24, 170:3, 170:7, 170:14, 170:16, 170:17, 170:22, 170:25, 171:20, 172:9</p> <p><b>interested</b> [2] - 103:9, 205:17</p> <p><b>interpret</b> [3] - 100:8, 176:24, 177:5</p> <p><b>interpretation</b> [1] - 100:9</p> <p><b>intra</b> [3] - 82:21, 84:23, 85:15</p> <p><b>intra-office</b> [2] - 82:21, 85:15</p> <p><b>investigation</b> [1] - 171:4</p> <p><b>involved</b> [6] - 71:14, 112:14, 135:14, 147:24, 155:20, 197:25</p> <p><b>IS</b> [2] - 58:5, 58:20</p> <p><b>is it your</b> [2] - 105:6, 107:20</p> <p><b>is that</b> [53] - 60:10, 60:25, 64:5, 64:13, 66:2, 69:11, 70:6, 72:3, 77:25, 83:22, 84:14, 87:17, 87:23, 88:15, 92:14, 95:10, 101:5, 103:18, 111:8, 113:6, 113:8, 114:6, 114:7, 118:13, 120:20, 122:24, 130:23, 140:13, 144:24, 144:25, 145:19, 147:12, 149:25, 152:11, 153:8, 157:4, 157:21, 158:2, 170:8, 171:22, 177:17, 181:6, 181:17, 182:7, 185:5, 186:23, 188:13, 190:10, 190:12, 191:9, 192:11, 193:17, 199:9</p> <p><b>is there</b> [9] - 95:14, 111:3, 126:3, 127:22, 128:23, 135:6, 136:22, 144:15, 189:8</p> <p><b>is this</b> [3] - 116:6, 178:22, 187:6</p> <p><b>Island</b> [2] - 194:12, 194:13</p> <p><b>issuance</b> [1] - 185:22</p> <p><b>issue</b> [13] - 71:9, 72:6, 72:12, 73:2, 78:19, 86:22, 87:10, 89:22, 136:13, 149:5, 153:7, 166:11, 176:10</p> <p><b>issued</b> [5] - 76:16, 86:20, 138:7, 153:4, 179:6</p> <p><b>issues</b> [1] - 85:3</p> <p><b>issuing</b> [1] - 79:16</p> <p><b>IT</b> [6] - 58:5, 58:20,</p>
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154:4, 154:10, 154:11, 168:14	71:25, 72:2, 72:6, 72:11, 72:15, 73:2, 73:7, 73:11, 73:20, 74:2, 74:6, 74:15, 75:8, 75:20, 76:15, 79:9, 79:16, 79:20, 80:11, 80:12, 87:8, 87:9, 91:6, 93:3, 94:13, 95:8, 95:14, 100:22, 103:17, 103:22, 103:25, 104:3, 105:12, 105:14, 108:10, 110:21, 113:25, 114:5, 114:21, 115:7, 117:9, 120:14, 122:13, 122:24, 123:4, 123:10, 123:23, 124:11, 125:3, 127:20, 128:2, 128:7, 128:18, 128:25, 129:7, 129:8, 129:14, 129:19, 130:17, 132:24, 133:2, 134:19, 136:7, 136:13, 136:20, 138:10, 140:11, 140:12, 140:16, 140:18, 140:21, 141:2, 141:3, 141:11, 141:16, 143:4, 143:17, 144:17, 145:6, 146:23, 149:21, 151:10, 152:3, 152:11, 153:7, 153:15, 156:7, 156:22, 156:25, 157:3, 160:11, 161:13, 161:20, 162:24, 163:4, 163:16, 163:17, 163:24, 164:9, 165:2, 165:14, 165:21, 167:6, 167:16, 167:18, 168:23, 170:17, 170:21, 172:19, 172:23, 173:25, 174:3, 174:7, 174:12, 183:18, 185:8, 185:12, 185:21, 195:23, 196:7, 196:16, 197:6, 197:16, 200:10	<b>keeps</b> [1] - 165:13 <b>kept</b> [2] - 132:21, 132:22 <b>KESHAVARZ</b> [22] - 57:3, 57:6, 59:7, 60:2, 60:12, 61:2, 61:19, 62:7, 62:14, 63:8, 92:7, 104:15, 131:21, 160:2, 173:18, 178:13, 187:15, 189:18, 191:13, 192:6, 201:23, 204:21 <b>Keshavarz</b> [1] - 56:22 <b>KINGS</b> [1] - 205:5 <b>know</b> [113] - 59:17, 59:21, 60:9, 60:17, 60:22, 61:9, 66:8, 68:11, 69:14, 69:23, 83:7, 85:17, 88:4, 90:14, 91:23, 97:11, 98:6, 98:7, 99:13, 101:18, 101:20, 103:5, 104:10, 104:13, 108:7, 112:18, 113:10, 114:12, 115:24, 118:16, 118:18, 118:20, 118:23, 118:25, 119:3, 119:12, 120:2, 120:5, 120:7, 121:22, 123:18, 125:21, 126:13, 127:16, 127:18, 128:12, 128:14, 128:15, 130:18, 133:18, 133:24, 134:5, 134:8, 137:2, 138:22, 141:19, 141:22, 144:7, 146:16, 152:9, 153:6, 154:21, 155:25, 156:7, 156:11, 156:13, 156:16, 156:23, 157:10, 158:22, 161:13, 161:15, 161:16, 162:25, 163:9, 164:14, 165:25, 167:2, 167:3, 169:7, 169:17, 170:6, 170:24, 171:3, 172:12, 175:8, 183:10, 184:7, 185:24, 186:9, 186:22, 188:15, 188:18, 188:20, 188:24, 189:4, 189:10, 191:7, 191:11, 191:12, 192:5, 193:15, 194:12, 194:16, 196:2, 197:21, 199:10, 199:12, 201:16, 201:20, 201:22 <b>knowing</b> [1] - 150:19 <b>knowledge</b> [4] - 108:6, 123:16, 131:12, 183:8 <b>KOVEN</b> [1] - 57:11	112:5, 112:11, 112:15, 113:2, 114:17, 114:22, 115:3, 115:8, 115:14, 119:18, 120:20, 121:4, 121:15, 121:19, 122:20, 123:9, 124:6, 124:24, 125:14, 126:5, 127:6, 145:2, 145:7, 172:15, 173:25, 174:6, 174:8, 176:2, 176:8, 180:25, 181:13, 182:18, 182:22, 185:10, 196:12 <b>landlord's</b> [1] - 181:17 <b>landlord-tenant</b> [38] - 109:19, 109:25, 110:6, 110:8, 110:10, 110:15, 111:18, 111:22, 111:24, 112:5, 112:11, 112:15, 113:2, 114:17, 114:22, 115:3, 115:8, 115:14, 119:18, 120:20, 121:4, 121:15, 121:19, 122:20, 123:9, 124:6, 124:24, 125:14, 126:5, 127:6, 145:2, 172:15, 173:25, 174:6, 174:8, 176:2, 185:10, 196:12 <b>landlords</b> [3] - 179:7, 181:7, 181:15 <b>language</b> [3] - 146:9, 146:17, 179:21 <b>Laos</b> [3] - 71:16, 136:11 <b>lapse</b> [1] - 183:20 <b>large</b> [1] - 118:10 <b>last</b> [7] - 61:16, 83:21, 94:7, 95:4, 115:25, 144:23, 176:22 <b>late</b> [3] - 59:17, 176:17, 177:7 <b>later</b> [6] - 85:11, 113:18, 115:10, 165:7, 169:3, 169:20 <b>law</b> [3] - 68:15, 68:19, 123:19 <b>Law</b> [1] - 56:22 <b>LAW</b> [2] - 57:3, 57:7 <b>Lawrence</b> [1] - 189:7 <b>lawsuit</b> [21] - 71:15, 79:5, 79:13, 108:18, 113:16, 120:14, 150:14, 150:18, 151:4, 151:6, 172:16, 173:8, 175:3, 178:24, 182:19, 182:22, 183:12, 183:16, 188:3, 190:8, 197:17 <b>lawsuits</b> [7] - 77:20, 109:19, 112:5, 112:11, 112:15, 180:11 <b>layout</b> [2] - 156:20 <b>learned</b> [1] - 171:12
<b>J</b>			
<b>James</b> [5] - 65:15, 72:24, 132:22, 139:24, 183:13 <b>JAMES</b> [3] - 56:4, 57:4, 57:10 <b>Jane</b> [1] - 165:4 <b>January</b> [3] - 116:2, 116:4, 116:13 <b>JESSICA</b> [1] - 57:7 <b>job</b> [3] - 85:3, 87:4 <b>John</b> [2] - 164:25, 165:3 <b>Judge</b> [1] - 58:13 <b>judge</b> [1] - 161:8 <b>judgement</b> [118] - 64:7, 65:14, 69:21, 70:8, 71:9, 72:5, 74:6, 75:2, 93:2, 96:23, 98:23, 101:4, 101:23, 103:12, 103:21, 104:2, 105:4, 109:10, 110:19, 110:23, 111:7, 111:9, 111:13, 113:5, 113:19, 113:24, 114:9, 114:15, 119:8, 120:16, 120:19, 121:9, 122:10, 122:23, 123:5, 123:6, 123:25, 124:7, 124:15, 124:23, 125:12, 126:7, 128:14, 129:9, 129:11, 129:12, 130:19, 130:20, 131:4, 131:16, 133:19, 133:23, 135:3, 135:8, 135:21, 135:23, 135:25, 136:9, 136:23, 138:13, 138:18, 139:5, 139:11, 139:22, 140:20, 141:14, 145:9, 147:22, 148:7, 148:13, 148:16, 150:7, 150:23, 152:22, 152:24, 153:18, 158:10, 158:25, 160:21, 163:9, 165:4, 166:13, 168:17, 168:18, 169:2, 169:15, 169:19, 170:15, 171:21, 172:10, 173:2, 183:13, 183:17, 183:23, 183:25, 184:2, 184:4, 184:25, 185:4, 185:11, 185:15, 185:16, 186:9, 191:22, 196:7, 196:16, 196:21, 196:23, 197:7, 198:24, 199:8, 199:21, 199:23, 200:17, 200:18, 200:19, 201:16 <b>judgements</b> [6] - 67:22, 68:2, 74:21, 86:16, 126:5, 162:5 <b>judgment</b> [130] - 65:18, 66:5, 68:7, 70:8, 70:14,	<b>judgments</b> [5] - 67:10, 71:22, 74:19, 121:25, 136:5 <b>July</b> [2] - 132:10, 186:8 <b>jumble</b> [1] - 117:24 <b>jump</b> [1] - 186:16 <b>June</b> [2] - 71:19, 167:21 <b>jury</b> [1] - 79:10		
	<b>K</b>		
	<b>Kavulich</b> [12] - 59:10, 61:4, 104:23, 173:15, 173:21, 178:22, 179:10, 187:25, 188:2, 192:7 <b>KAVULICH</b> [8] - 56:9, 56:9, 56:17, 56:18, 56:19, 57:14, 57:15, 203:15 <b>keep</b> [7] - 82:23, 100:6, 139:18, 140:5, 140:23, 166:4, 168:11		
		<b>L</b>	
		<b>lady</b> [1] - 155:20 <b>landlord</b> [45] - 109:19, 109:25, 110:6, 110:8, 110:10, 110:15, 111:6, 111:18, 111:22, 111:24,	

<p><b>Lease</b> [1] - 204:13  <b>lease</b> [22] - 106:4, 107:11, 113:13, 115:12, 175:8, 175:12, 175:18, 175:24, 176:4, 176:10, 176:18, 176:24, 177:2, 177:5, 177:10, 177:16, 178:11, 178:23, 179:3, 179:5, 180:7, 180:10  <b>lease-holders</b> [1] - 113:13  <b>leases</b> [3] - 177:25, 178:8, 179:8  <b>least</b> [2] - 59:23, 129:23  <b>leave</b> [5] - 59:18, 89:8, 115:13, 166:6, 192:8  <b>left</b> [12] - 59:16, 72:9, 122:11, 134:4, 138:18, 141:16, 141:19, 143:14, 143:15, 154:9, 164:18, 170:22  <b>LEGAL</b> [1] - 57:9  <b>legal</b> [12] - 118:9, 119:19, 119:20, 119:25, 120:3, 120:6, 175:23, 176:17, 177:7, 180:8, 181:23, 182:13  <b>let's</b> [22] - 59:15, 59:16, 63:8, 64:11, 76:13, 76:16, 76:18, 79:22, 92:7, 95:5, 100:14, 100:16, 100:21, 148:11, 157:11, 165:6, 165:7, 168:22, 170:4, 172:14, 191:13, 193:7  <b>letter</b> [5] - 108:16, 144:21, 156:10, 156:25, 157:8  <b>letters</b> [4] - 78:24, 91:7, 108:11, 156:6  <b>level</b> [1] - 144:10  <b>levy</b> [2] - 63:4, 63:6  <b>liability</b> [1] - 191:17  <b>liaison</b> [1] - 119:18  <b>likelihood</b> [1] - 134:20  <b>limitation</b> [1] - 107:7  <b>limitations</b> [8] - 105:11, 105:17, 105:21, 106:2, 106:9, 106:11, 106:15, 106:25  <b>line</b> [5] - 95:4, 98:24, 109:6, 164:15, 177:13  <b>lines</b> [2] - 95:7, 157:5  <b>lingo</b> [2] - 129:10, 130:17  <b>list</b> [4] - 74:3, 75:14, 164:6, 195:19  <b>listed</b> [3] - 64:3, 72:23, 73:11  <b>lists</b> [4] - 71:24, 82:23, 86:11, 86:24  <b>litigation</b> [2] - 109:22,</p>	<p>113:21  <b>little</b> [6] - 80:21, 85:10, 88:11, 91:14, 152:5, 163:5  <b>logistics</b> [1] - 59:17  <b>Long</b> [2] - 194:12, 194:13  <b>long</b> [5] - 91:22, 118:16, 118:19, 144:9, 180:4  <b>longer</b> [2] - 122:7, 194:5  <b>look</b> [25] - 87:6, 92:19, 94:3, 94:6, 123:4, 125:16, 126:10, 126:23, 127:2, 134:18, 138:3, 138:4, 138:5, 148:12, 154:14, 159:3, 170:12, 176:2, 176:3, 176:10, 177:6, 177:11, 177:24, 178:7, 189:13  <b>looked</b> [6] - 125:7, 156:17, 157:7, 180:3, 184:24, 196:5  <b>looking</b> [16] - 97:2, 108:19, 109:5, 132:17, 133:9, 133:12, 133:13, 146:20, 155:7, 162:20, 162:23, 164:3, 164:6, 185:3, 195:16, 200:23  <b>looks</b> [3] - 129:3, 136:12, 173:4  <b>losing</b> [2] - 182:10, 182:11  <b>lost</b> [1] - 130:13  <b>lot</b> [3] - 86:9, 86:10, 144:8  <b>LP</b> [2] - 56:9, 57:15</p>	<p>109:8, 114:12, 115:21, 116:18, 128:10, 138:8, 138:24, 148:14, 148:16, 149:2, 174:14, 174:16  <b>mark</b> [8] - 62:11, 62:17, 63:8, 104:15, 131:21, 178:13, 187:15, 189:18  <b>marked</b> [11] - 63:12, 63:17, 104:18, 104:22, 131:25, 132:5, 178:17, 178:21, 187:19, 187:23, 189:22  <b>marriage</b> [1] - 205:16  <b>Marsh</b> [3] - 189:7, 189:13, 189:16  <b>Marshal</b> [1] - 63:4  <b>marshal</b> [74] - 63:25, 64:5, 64:8, 64:9, 64:10, 70:9, 92:24, 92:25, 93:5, 93:9, 93:16, 134:6, 135:12, 135:14, 137:4, 137:6, 139:3, 139:5, 139:10, 139:15, 139:16, 139:23, 139:25, 140:2, 140:8, 140:10, 140:11, 141:5, 141:11, 141:17, 141:23, 141:25, 142:9, 142:14, 142:18, 142:20, 142:23, 143:5, 143:9, 143:16, 144:4, 144:18, 145:17, 145:18, 147:20, 149:7, 155:17, 163:12, 165:11, 165:12, 165:19, 166:6, 166:7, 166:11, 166:14, 166:15, 166:17, 166:21, 166:25, 167:10, 167:11, 167:14, 167:25, 168:5, 168:11, 170:25, 171:8, 171:18, 171:19, 171:24, 172:8, 172:13, 201:14, 201:20  <b>marshals</b> [3] - 141:6, 165:9, 165:23  <b>matches</b> [1] - 81:5  <b>math</b> [6] - 134:12, 134:13, 134:16, 154:24, 161:22, 161:23  <b>matter</b> [3] - 154:10, 186:24, 205:18  <b>mean</b> [29] - 68:8, 68:18, 68:22, 68:24, 69:17, 73:14, 80:9, 81:8, 84:6, 86:12, 99:6, 101:14, 101:21, 111:3, 111:4, 111:24, 112:23, 116:23, 120:5, 141:15, 143:11, 144:10, 144:24, 147:25, 167:12, 169:9, 179:3, 192:3, 195:11  <b>meaning</b> [2] - 82:15,</p>	<p>122:6  <b>means</b> [3] - 99:17, 129:6, 130:17  <b>meant</b> [1] - 199:14  <b>measures</b> [1] - 111:5  <b>mechanism</b> [5] - 72:7, 72:11, 72:16, 73:3, 136:14  <b>mechanisms</b> [5] - 67:25, 72:3, 76:16, 79:17, 91:7  <b>meet</b> [1] - 83:2  <b>meetings</b> [4] - 82:21, 84:23, 85:15, 85:24  <b>MELISSA</b> [1] - 57:11  <b>members</b> [1] - 85:2  <b>mentioned</b> [3] - 134:10, 197:20, 197:25  <b>Mercedes</b> [11] - 115:25, 116:12, 118:7, 119:5, 125:7, 125:24, 176:19, 176:23, 177:14, 178:9, 198:12  <b>Mercedes'</b> [1] - 197:15  <b>metaphysical</b> [1] - 123:2  <b>metaphysically</b> [3] - 171:2, 191:10, 191:11  <b>Metropolitan</b> [4] - 192:18, 194:7, 194:24, 198:20  <b>middle</b> [1] - 164:16  <b>mind</b> [3] - 78:22, 82:10, 192:3  <b>minimum</b> [1] - 82:23  <b>miniscule</b> [1] - 159:4  <b>minor</b> [2] - 157:23, 158:2  <b>Mintz</b> [18] - 89:4, 89:24, 90:3, 90:4, 90:9, 109:18, 109:20, 112:3, 112:8, 112:15, 121:18, 121:20, 141:16, 143:10, 143:16, 183:6, 183:9, 191:19  <b>minute</b> [2] - 76:13, 180:23  <b>minutes</b> [1] - 143:8  <b>mischaracterizing</b> [1] - 134:9  <b>misread</b> [2] - 125:24, 126:12  <b>Miss</b> [49] - 70:2, 70:16, 73:10, 75:7, 75:25, 76:9, 108:21, 115:20, 124:4, 126:6, 127:7, 127:20, 128:2, 128:14, 128:19, 129:2, 129:15, 129:20, 131:4, 131:17, 132:9, 133:6, 133:16, 135:2, 136:21, 139:7, 139:25, 140:8, 145:6, 145:17, 152:16, 163:6, 163:16, 165:11, 167:21, 172:17, 172:18, 173:9, 173:23,</p>
<b>M</b>			
<p><b>mail</b> [8] - 83:2, 117:2, 163:12, 197:23, 198:10, 198:11, 201:19, 201:24  <b>mailed</b> [5] - 190:13, 190:16, 190:25, 191:8, 197:22  <b>mails</b> [8] - 61:5, 61:9, 61:11, 61:14, 61:15, 62:2, 88:6, 201:13  <b>main</b> [1] - 71:12  <b>major</b> [4] - 67:24, 83:4, 86:24, 90:24  <b>management</b> [12] - 107:23, 108:3, 118:13, 119:15, 192:15, 192:21, 192:24, 193:4, 193:18, 193:20, 195:9, 195:14  <b>manually</b> [4] - 161:23, 162:9, 162:10, 167:4  <b>March</b> [20] - 64:17, 66:7, 94:21, 95:9, 95:14, 101:10, 101:25, 108:24,</p>			

<p>188:8, 188:17, 190:7, 190:9, 190:25, 191:7, 198:25, 199:9, 199:20, 199:25</p> <p><b>missing</b> [1] - 65:20</p> <p><b>mistake</b> [3] - 97:9, 101:20, 139:12</p> <p><b>mistaken</b> [2] - 61:13, 64:24</p> <p><b>mistakenly</b> [1] - 152:17</p> <p><b>Mitch</b> [2] - 61:12, 62:6</p> <p><b>MITCHELL</b> [2] - 57:13, 57:17</p> <p><b>moment</b> [2] - 165:6, 165:8</p> <p><b>momentary</b> [1] - 183:20</p> <p><b>Monday</b> [1] - 156:12</p> <p><b>monetary</b> [1] - 131:16</p> <p><b>money</b> [58] - 66:23, 105:9, 105:12, 105:13, 105:18, 110:14, 110:16, 113:5, 113:24, 114:4, 114:15, 114:20, 115:7, 120:19, 122:24, 123:5, 123:10, 123:11, 123:23, 123:24, 124:22, 125:3, 125:12, 126:7, 127:19, 128:2, 128:13, 128:18, 128:25, 129:14, 129:19, 130:17, 132:23, 133:4, 133:6, 137:3, 137:6, 144:8, 145:5, 148:17, 148:21, 152:16, 154:9, 159:6, 166:12, 172:19, 173:25, 174:3, 174:7, 182:11, 185:4, 185:8, 185:15, 185:16, 197:7, 199:8, 201:3</p> <p><b>monies</b> [16] - 69:24, 69:25, 70:16, 90:6, 140:19, 146:18, 146:19, 152:13, 153:14, 170:10, 174:13, 174:14, 174:15, 182:11, 182:15, 196:4</p> <p><b>month</b> [9] - 76:21, 77:11, 77:13, 169:3, 169:12, 169:20, 169:24</p> <p><b>MOODY</b> [1] - 57:7</p> <p><b>MORALES</b> [3] - 56:4, 57:4, 57:10</p> <p><b>morales</b> [6] - 190:6, 192:3, 193:10, 199:22, 199:24, 200:20</p> <p><b>Morales</b> [55] - 61:6, 62:3, 62:13, 62:19, 63:18, 65:15, 70:4, 72:24, 73:10, 73:21, 75:7, 76:2, 76:8, 93:10, 98:19, 103:21, 103:23, 103:25, 104:23, 105:8, 105:9, 105:22,</p>	<p>106:6, 106:16, 108:21, 115:21, 124:5, 126:6, 127:8, 131:5, 132:10, 132:22, 133:16, 135:2, 139:24, 140:21, 145:10, 145:19, 152:18, 163:7, 163:17, 165:13, 172:17, 173:9, 173:16, 183:13, 185:5, 185:9, 188:8, 188:17, 190:4, 190:9, 190:25, 191:8, 198:25</p> <p><b>Morales</b> [1] - 106:3</p> <p><b>morning</b> [1] - 59:14</p> <p><b>Moses</b> [6] - 141:8, 141:17, 142:12, 143:10, 143:16, 144:4</p> <p><b>mostly</b> [3] - 175:5, 175:11, 175:19</p> <p><b>motion</b> [2] - 87:9, 112:21</p> <p><b>motions</b> [1] - 78:7</p> <p><b>move</b> [4] - 95:5, 100:16, 101:21, 172:14</p> <p><b>moved</b> [5] - 71:16, 102:6, 120:25, 122:16, 122:17</p> <p><b>Mr</b> [52] - 61:4, 61:5, 62:3, 70:4, 73:10, 75:7, 76:2, 76:8, 93:10, 98:19, 103:21, 103:23, 103:25, 105:7, 105:9, 105:22, 106:3, 106:16, 108:21, 115:21, 124:4, 126:6, 127:7, 131:4, 132:9, 133:16, 140:21, 145:19, 152:18, 163:7, 163:17, 165:13, 172:17, 173:9, 185:5, 185:9, 188:8, 188:17, 189:15, 189:16, 190:4, 190:6, 190:9, 190:25, 191:7, 192:3, 192:7, 193:10, 198:25, 199:22, 199:24, 200:19</p> <p><b>MR</b> [36] - 59:7, 59:25, 60:2, 60:8, 60:12, 60:14, 61:2, 61:16, 61:19, 62:7, 62:9, 62:14, 63:8, 74:11, 74:16, 89:12, 89:16, 90:10, 90:22, 91:2, 92:7, 100:5, 104:15, 108:14, 131:21, 160:2, 173:18, 178:13, 187:15, 189:18, 191:13, 192:6, 192:12, 201:10, 201:23, 204:21</p> <p><b>Mrs</b> [1] - 189:15</p> <p><b>Ms</b> [1] - 190:4</p> <p><b>multiple</b> [4] - 113:3, 123:9, 144:17</p> <p><b>myself</b> [1] - 183:24</p>	<p>117:4, 163:24, 189:6</p> <p><b>named</b> [1] - 95:8</p> <p><b>names</b> [3] - 96:5, 96:7, 113:20</p> <p><b>narrow</b> [1] - 100:11</p> <p><b>necessarily</b> [2] - 66:15, 115:23</p> <p><b>necessary</b> [2] - 84:9, 193:15</p> <p><b>need</b> [4] - 79:10, 89:2, 130:18, 155:16</p> <p><b>neglected</b> [2] - 139:2, 139:4</p> <p><b>never</b> [8] - 111:21, 112:21, 129:14, 139:21, 153:14, 156:15, 191:25, 194:14</p> <p><b>NEW</b> [2] - 56:2, 205:4</p> <p><b>next</b> [3] - 98:24, 155:24, 201:25</p> <p><b>nice</b> [1] - 142:4</p> <p><b>night</b> [1] - 61:17</p> <p><b>nine</b> [3] - 77:19, 169:3, 169:21</p> <p><b>ninety</b> [3] - 77:19, 168:25, 169:5</p> <p><b>ninety-nine</b> [1] - 77:19</p> <p><b>nobody</b> [1] - 130:7</p> <p><b>non</b> [5] - 134:16, 136:11, 142:5, 191:23, 199:23</p> <p><b>non-attorney</b> [1] - 136:11</p> <p><b>non-clinical</b> [1] - 142:5</p> <p><b>non-existent</b> [1] - 191:23</p> <p><b>non-judgement</b> [1] - 199:23</p> <p><b>non-math</b> [1] - 134:16</p> <p><b>none</b> [1] - 78:21</p> <p><b>NONE</b> [1] - 204:25</p> <p><b>normally</b> [2] - 196:10, 196:15</p> <p><b>notarized</b> [1] - 189:11</p> <p><b>Notary</b> [3] - 56:24, 59:4, 205:7</p> <p><b>NOTARY</b> [1] - 203:22</p> <p><b>notation</b> [2] - 124:19, 130:23</p> <p><b>note</b> [5] - 186:13, 197:15, 198:16, 199:4, 199:6</p> <p><b>noted</b> [1] - 136:3</p> <p><b>notes</b> [14] - 105:3, 127:17, 130:14, 176:17, 177:3, 178:9, 183:23, 184:12, 186:3, 186:5, 190:23, 197:11</p> <p><b>nothing</b> [4] - 164:23, 190:22, 195:2, 195:3</p> <p><b>Notice</b> [5] - 56:20, 190:2, 190:24, 191:9, 204:15</p> <p><b>notice</b> [31] - 62:23,</p>	<p>64:13, 66:7, 67:2, 67:5, 79:3, 79:6, 79:11, 79:12, 79:19, 79:23, 80:8, 80:10, 86:23, 87:2, 87:10, 92:20, 93:20, 97:3, 97:22, 112:19, 137:17, 138:7, 150:5, 151:7, 151:25, 152:8, 157:13, 158:23, 184:8</p> <p><b>notices</b> [19] - 68:5, 78:16, 78:18, 78:19, 79:2, 79:25, 80:20, 81:4, 81:17, 81:18, 81:21, 81:22, 82:5, 91:8, 153:21, 170:13, 170:14, 190:16</p> <p><b>notify</b> [1] - 190:8</p> <p><b>noting</b> [1] - 136:17</p> <p><b>November</b> [2] - 61:22, 61:23</p> <p><b>november</b> [1] - 56:13</p> <p><b>nowadays</b> [1] - 113:7</p> <p><b>number</b> [21] - 64:12, 65:7, 65:20, 71:21, 95:4, 96:8, 104:7, 104:11, 109:21, 126:21, 141:3, 143:4, 145:10, 145:14, 158:11, 158:17, 159:4, 162:19, 165:10, 183:2, 193:25</p> <p><b>NUMBER</b> [1] - 204:7</p> <p><b>numbers</b> [8] - 76:17, 81:2, 81:6, 96:5, 140:6, 151:15, 151:16, 166:9</p>
<b>O</b>			
<p><b>oath</b> [1] - 58:12</p> <p><b>object</b> [2] - 60:9, 60:24</p> <p><b>objected</b> [1] - 60:12</p> <p><b>objection</b> [8] - 74:11, 74:16, 89:12, 89:16, 90:10, 90:22, 91:2, 108:14</p> <p><b>objections</b> [1] - 58:21</p> <p><b>obligation</b> [1] - 182:17</p> <p><b>obtain</b> [2] - 124:14, 183:17</p> <p><b>obtained</b> [1] - 127:19</p> <p><b>obviously</b> [1] - 106:7</p> <p><b>occupancy</b> [2] - 175:15, 176:18</p> <p><b>occurring</b> [1] - 99:6</p> <p><b>October</b> [2] - 106:23, 106:24</p> <p><b>OF</b> [4] - 56:2, 57:3, 205:4, 205:5</p> <p><b>off-the-record</b> [1] - 62:15</p> <p><b>office</b> [50] - 71:7, 75:17, 77:17, 79:12, 81:3, 82:12, 82:21, 84:23, 85:15, 88:18, 91:13, 94:4, 95:24,</p>			

<p>96:12, 104:24, 107:15, 109:13, 117:23, 125:11, 126:4, 126:15, 127:18, 128:25, 129:13, 131:10, 132:8, 136:5, 138:7, 138:22, 139:9, 139:20, 141:4, 144:16, 146:13, 147:12, 147:21, 151:4, 152:9, 153:5, 157:15, 158:22, 160:23, 161:12, 168:13, 188:13, 190:8, 192:10, 193:13, 193:16, 199:5</p> <p><b>OFFICE</b> [1] - 57:3  <b>Office</b> [1] - 56:22  <b>office's</b> [2] - 114:14, 126:2  <b>okay</b> [2] - 61:25, 68:12  <b>old</b> [8] - 88:19, 89:4, 118:20, 141:14, 141:15, 163:25, 166:21, 183:4  <b>once</b> [8] - 70:7, 75:5, 80:13, 126:21, 135:11, 135:14, 155:25, 156:2  <b>one-year</b> [1] - 169:16  <b>ones</b> [3] - 62:20, 82:10, 103:5  <b>open</b> [4] - 82:20, 117:17, 199:17, 199:19  <b>opened</b> [13] - 88:18, 117:22, 128:4, 128:5, 129:23, 146:13, 146:16, 147:12, 151:4, 183:22, 196:2, 199:20, 199:21  <b>opening</b> [4] - 84:5, 84:6, 84:21, 193:9  <b>opens</b> [1] - 177:15  <b>operation</b> [1] - 154:14  <b>opposed</b> [5] - 117:9, 119:7, 141:11, 159:9, 186:10  <b>oral</b> [1] - 81:11  <b>order</b> [4] - 63:21, 111:12, 115:6, 120:19  <b>orders</b> [1] - 120:21  <b>original</b> [3] - 58:9, 58:17, 105:19  <b>otherwise</b> [2] - 175:14, 182:9  <b>ourselves</b> [1] - 133:3  <b>outcome</b> [1] - 205:17  <b>oversight</b> [2] - 70:18, 153:3  <b>owe</b> [6] - 105:17, 134:15, 155:13, 162:17, 168:25, 169:5  <b>owed</b> [15] - 105:12, 105:13, 117:5, 132:13, 132:23, 134:8, 134:21, 135:8, 135:9, 152:16,</p>	<p>154:25, 155:3, 155:4, 170:10, 182:12  <b>owes</b> [2] - 105:8, 105:9  <b>owing</b> [2] - 133:4, 196:4  <b>owned</b> [1] - 152:18  <b>owner</b> [7] - 110:24, 179:15, 179:16, 180:10, 180:12, 180:18, 180:20  <b>owner's</b> [2] - 179:18, 180:18</p> <p style="text-align: center;"><b>P</b></p> <p><b>P.C</b> [3] - 56:9, 56:17, 57:14  <b>P.M</b> [1] - 202:2  <b>page</b> [13] - 62:22, 63:3, 109:2, 128:9, 146:21, 146:23, 156:20, 164:4, 164:16, 179:4, 180:6, 180:7, 180:21  <b>PAGE</b> [3] - 204:6, 204:20, 204:24  <b>pages</b> [5] - 62:20, 62:24, 130:11, 130:12, 173:20  <b>paid</b> [10] - 134:2, 134:3, 134:19, 155:22, 161:15, 163:8, 163:15, 171:9, 181:13, 182:15  <b>paper</b> [1] - 64:20  <b>papers</b> [2] - 120:10, 131:2  <b>paragraph</b> [5] - 92:19, 137:19, 179:11, 180:21, 180:22  <b>paranoia</b> [1] - 142:6  <b>paranoid</b> [2] - 141:20, 141:21  <b>parenthesis</b> [2] - 104:23, 173:16  <b>Park</b> [1] - 57:16  <b>part</b> [4] - 89:14, 95:11, 157:2, 194:23  <b>partially</b> [1] - 137:14  <b>particular</b> [10] - 64:19, 71:13, 72:15, 75:16, 124:18, 141:9, 166:5, 193:20, 194:4, 198:13  <b>parties</b> [9] - 58:7, 95:8, 96:7, 112:25, 115:5, 117:5, 148:15, 190:17, 205:15  <b>PASHKIN</b> [18] - 57:13, 57:17, 59:25, 60:8, 60:14, 61:16, 62:9, 74:11, 74:16, 89:12, 89:16, 90:10, 90:22, 91:2, 100:5, 108:14, 192:12, 201:10  <b>pasting</b> [1] - 171:13  <b>pay</b> [6] - 155:25, 169:3,</p>	<p>179:14, 179:16, 181:2, 182:6  <b>paying</b> [3] - 123:20, 123:22, 155:13  <b>payment</b> [10] - 110:20, 112:24, 155:3, 165:10, 168:8, 169:12, 169:18, 169:25, 171:7, 172:4  <b>payments</b> [22] - 104:8, 148:9, 149:25, 152:23, 153:18, 155:8, 160:20, 161:7, 161:21, 161:25, 162:2, 162:6, 163:15, 164:7, 164:12, 165:2, 165:12, 166:14, 167:20, 168:20, 169:16, 172:6  <b>pays</b> [2] - 140:19, 169:21  <b>people</b> [11] - 115:12, 115:16, 116:11, 133:2, 142:4, 154:4, 155:6, 165:4, 168:15, 196:3, 199:15  <b>people's</b> [1] - 118:4  <b>percent</b> [16] - 77:19, 82:16, 83:10, 83:11, 83:19, 83:20, 84:2, 84:13, 85:7, 85:9, 85:23, 86:5, 87:14, 87:22, 168:24, 170:2  <b>percentage</b> [16] - 83:8, 84:11, 84:19, 85:5, 85:14, 85:21, 85:25, 87:12, 88:8, 159:5, 159:13, 159:14, 159:16, 159:17, 181:3, 181:25  <b>percentage-wise</b> [1] - 159:5  <b>period</b> [5] - 76:20, 142:17, 142:22, 151:2, 169:16  <b>person</b> [17] - 70:19, 70:20, 71:7, 71:12, 110:9, 114:8, 115:12, 115:17, 116:10, 117:6, 118:9, 137:11, 140:24, 154:23, 154:24, 163:19  <b>person's</b> [2] - 130:5, 130:6  <b>personality</b> [1] - 194:9  <b>personally</b> [3] - 71:3, 144:11, 198:3  <b>persons</b> [3] - 72:23, 73:6, 145:14  <b>petition</b> [1] - 112:19  <b>photocopy</b> [1] - 196:6  <b>phrase</b> [3] - 100:12, 100:22, 102:9  <b>phrases</b> [1] - 102:19  <b>physical</b> [3] - 124:15, 125:3, 126:17</p>	<p><b>physically</b> [4] - 193:13, 198:13, 198:14, 198:15  <b>pick</b> [10] - 59:15, 74:3, 84:8, 148:10, 195:18, 197:19, 197:23, 198:6, 198:8, 201:24  <b>picked</b> [3] - 129:4, 130:15, 198:4  <b>piece</b> [1] - 64:19  <b>pile</b> [1] - 130:25  <b>place</b> [3] - 90:5, 203:11  <b>placed</b> [2] - 89:23, 142:20  <b>PLAINTIFF</b> [1] - 56:5  <b>plaintiff</b> [2] - 74:9, 174:19  <b>Plaintiff</b> [3] - 56:19, 57:4, 57:9  <b>PLAINTIFF'S</b> [1] - 204:4  <b>Plaintiff's</b> [23] - 63:10, 63:12, 66:2, 104:16, 104:18, 104:22, 131:22, 131:25, 132:5, 133:9, 133:13, 133:14, 144:25, 173:19, 178:14, 178:17, 178:21, 187:16, 187:19, 187:23, 189:19, 189:22, 189:25  <b>play</b> [1] - 181:7  <b>pleadings</b> [1] - 77:17  <b>Please</b> [1] - 59:8  <b>please</b> [5] - 131:21, 138:5, 178:13, 187:16, 189:19  <b>plus</b> [4] - 135:25, 153:16, 161:9, 169:24  <b>point</b> [12] - 73:9, 118:9, 121:24, 122:15, 129:23, 139:14, 167:15, 171:17, 179:9, 182:23, 194:21, 201:11  <b>policy</b> [5] - 150:25, 151:3, 167:8, 167:9, 167:12  <b>pop</b> [1] - 86:14  <b>pop-up</b> [1] - 86:14  <b>pops</b> [4] - 71:24, 75:2, 136:10, 136:21  <b>position</b> [3] - 103:16, 105:7, 105:20  <b>possession</b> [15] - 107:5, 110:19, 110:22, 110:25, 111:2, 111:7, 111:9, 111:14, 122:5, 126:4, 128:13, 129:14, 130:24, 131:6, 134:25  <b>possessor</b> [1] - 130:18  <b>possessory</b> [11] - 120:18, 120:21, 121:9, 121:24, 122:10, 122:13,</p>
--	--	---	--

<p>122:23, 123:3, 123:6, 126:7, 129:9</p> <p><b>possibility</b> [2] - 120:23, 123:2</p> <p><b>post</b> [18] - 71:9, 72:2, 72:6, 72:11, 72:15, 73:2, 73:20, 74:2, 74:6, 76:15, 79:16, 79:20, 91:6, 110:8, 122:5, 124:24, 136:13, 143:17</p> <p><b>post-judgement</b> [1] - 71:9</p> <p><b>post-judgment</b> [12] - 72:2, 72:6, 72:15, 73:20, 74:2, 74:6, 76:15, 79:16, 79:20, 91:6, 136:13, 143:17</p> <p><b>Potter</b> [63] - 69:20, 70:2, 70:16, 72:24, 73:11, 73:22, 75:7, 75:25, 76:9, 103:23, 104:2, 104:4, 108:21, 115:21, 124:4, 126:6, 127:7, 127:20, 128:3, 128:14, 128:19, 129:2, 129:15, 129:20, 131:4, 131:17, 132:9, 133:6, 133:16, 135:2, 136:21, 139:8, 140:2, 140:8, 140:18, 140:19, 145:6, 145:10, 145:17, 152:16, 163:7, 163:16, 163:21, 163:22, 165:11, 167:21, 172:17, 172:18, 173:9, 173:24, 174:7, 188:8, 188:17, 190:4, 190:7, 190:9, 190:25, 191:7, 198:25, 199:9, 199:20, 199:25</p> <p><b>poundage</b> [6] - 64:3, 64:10, 135:13, 135:17, 135:18, 135:19</p> <p><b>practice</b> [3] - 109:24, 115:10, 117:22</p> <p><b>Prage</b> [1] - 201:9</p> <p><b>premises</b> [1] - 127:14</p> <p><b>present</b> [6] - 79:10, 97:23, 98:4, 150:6, 150:11, 157:21</p> <p><b>presently</b> [1] - 102:17</p> <p><b>pretty</b> [3] - 83:6, 92:3, 171:5</p> <p><b>prevent</b> [1] - 144:23</p> <p><b>primarily</b> [3] - 72:10, 109:18, 110:2</p> <p><b>primary</b> [7] - 109:22, 109:24, 111:8, 111:10, 111:16, 116:19, 116:21</p> <p><b>principal</b> [2] - 168:9, 168:17</p> <p><b>print</b> [1] - 154:16</p>	<p><b>printed</b> [1] - 70:22</p> <p><b>prints</b> [1] - 64:24</p> <p><b>prior</b> [9] - 79:12, 79:15, 107:18, 109:10, 109:16, 116:6, 125:3, 128:7, 196:11</p> <p><b>probably</b> [11] - 77:6, 85:7, 85:16, 87:18, 87:25, 142:25, 157:6, 157:23, 166:22, 200:12</p> <p><b>problematic</b> [1] - 165:24</p> <p><b>problems</b> [2] - 82:24, 87:19</p> <p><b>Procedure</b> [1] - 56:21</p> <p><b>procedure</b> [3] - 111:11, 114:14, 191:12</p> <p><b>proceed</b> [2] - 74:5, 75:20</p> <p><b>proceedings</b> [1] - 180:9</p> <p><b>process</b> [12] - 63:18, 63:21, 121:10, 150:12, 181:10, 184:4, 188:11, 188:24, 188:25, 189:12, 189:16, 198:18</p> <p><b>produced</b> [3] - 62:4, 187:9, 187:24</p> <p><b>production</b> [4] - 109:2, 128:24, 129:21, 131:19</p> <p><b>productive</b> [1] - 101:22</p> <p><b>program</b> [1] - 71:21</p> <p><b>progressed</b> [1] - 195:6</p> <p><b>Properties</b> [3] - 192:18, 192:24, 198:21</p> <p><b>properties</b> [1] - 196:4</p> <p><b>property</b> [22] - 63:3, 107:23, 108:3, 110:12, 110:19, 110:24, 111:13, 118:13, 121:11, 135:11, 137:23, 143:13, 146:2, 148:3, 149:8, 164:21, 192:15, 192:21, 193:3, 193:18, 195:9, 195:14</p> <p><b>provide</b> [3] - 106:14, 125:11, 126:9</p> <p><b>provided</b> [7] - 107:15, 109:13, 131:5, 131:6, 131:10, 188:12, 193:9</p> <p><b>provision</b> [1] - 176:4</p> <p><b>Public</b> [3] - 56:24, 59:4, 205:7</p> <p><b>PUBLIC</b> [1] - 203:22</p> <p><b>pull</b> [3] - 75:15, 113:19, 127:2</p> <p><b>punishing</b> [1] - 89:9</p> <p><b>punitive</b> [7] - 105:4, 105:22, 140:12, 141:2, 141:10, 143:4, 163:17</p> <p><b>pure</b> [1] - 74:7</p> <p><b>purpose</b> [3] - 109:23, 111:8, 111:10</p> <p><b>purposely</b> [2] - 139:21,</p>	<p>139:23</p> <p><b>purposes</b> [4] - 59:24, 60:3, 60:7, 130:19</p> <p><b>pursuant</b> [2] - 56:19, 197:10</p> <p><b>pursue</b> [1] - 137:12</p> <p><b>pursued</b> [1] - 73:7</p> <p><b>puts</b> [2] - 109:11, 176:20</p> <p><b>putting</b> [4] - 103:14, 140:25, 161:18, 161:21</p>	<p><b>recall</b> [4] - 147:6, 184:10, 184:12, 197:13</p> <p><b>receive</b> [2] - 81:9, 198:9</p> <p><b>received</b> [6] - 61:5, 127:24, 127:25, 128:25, 140:19, 198:11</p> <p><b>recently</b> [3] - 71:14, 171:15, 172:3</p> <p><b>recess</b> [3] - 92:9, 160:4, 191:15</p> <p><b>recollecting</b> [1] - 183:24</p> <p><b>recollection</b> [10] - 76:3, 76:10, 104:14, 105:15, 105:24, 105:25, 114:7, 147:9, 174:13, 184:18</p> <p><b>recommended</b> [1] - 194:25</p> <p><b>record</b> [4] - 59:9, 62:14, 62:15, 205:12</p> <p><b>records</b> [8] - 115:19, 115:23, 126:3, 127:23, 128:17, 128:20, 135:7, 168:4</p> <p><b>recover</b> [1] - 174:19</p> <p><b>recovery</b> [2] - 175:9, 176:5</p> <p><b>reduce</b> [1] - 169:13</p> <p><b>referenced</b> [1] - 199:7</p> <p><b>referencing</b> [1] - 190:15</p> <p><b>referring</b> [3] - 134:12, 163:21, 201:21</p> <p><b>reflect</b> [3] - 161:5, 168:3, 185:8</p> <p><b>reflected</b> [2] - 153:19, 154:2</p> <p><b>regain</b> [2] - 110:25, 111:2</p> <p><b>regarding</b> [3] - 61:5, 115:20, 131:3</p> <p><b>regardless</b> [1] - 187:11</p> <p><b>regrettably</b> [1] - 198:3</p> <p><b>regular</b> [2] - 71:23, 86:15</p> <p><b>regularly</b> [1] - 82:8</p> <p><b>rehash</b> [1] - 160:7</p> <p><b>reimburse</b> [1] - 180:18</p> <p><b>related</b> [2] - 62:3, 205:15</p> <p><b>relationship</b> [3] - 115:14, 142:8, 146:24</p> <p><b>relevance</b> [4] - 60:10, 60:24, 89:17, 108:15</p> <p><b>relevancy</b> [4] - 74:12, 89:13, 90:11, 90:23</p> <p><b>relevant</b> [4] - 85:3, 120:23, 122:2, 123:4</p> <p><b>relied</b> [1] - 178:8</p> <p><b>relief</b> [1] - 174:24</p> <p><b>rely</b> [3] - 135:12, 135:15, 147:20</p> <p><b>remaining</b> [4] - 65:17, 103:11, 152:21, 167:22</p> <p><b>remains</b> [15] - 94:22,</p>
<b>Q</b>			
<p><b>qualifications</b> [1] - 118:6</p> <p><b>quantify</b> [1] - 86:10</p> <p><b>Queens</b> [1] - 141:23</p> <p><b>question</b> [19] - 60:21, 69:3, 69:6, 79:5, 85:13, 97:24, 99:7, 99:9, 99:25, 103:15, 124:21, 125:10, 134:24, 147:8, 151:24, 152:19, 154:21, 154:22, 173:23</p> <p><b>questioning</b> [1] - 177:13</p> <p><b>questions</b> [4] - 59:20, 60:5, 79:9, 157:2</p> <p><b>quick</b> [1] - 191:14</p>			
<b>R</b>			
<p><b>ran</b> [1] - 105:21</p> <p><b>range</b> [3] - 77:12, 106:21, 106:22</p> <p><b>rare</b> [1] - 165:18</p> <p><b>rate</b> [2] - 175:17, 180:18</p> <p><b>raw</b> [1] - 144:7</p> <p><b>re</b> [1] - 179:14</p> <p><b>re-rented</b> [1] - 179:14</p> <p><b>reached</b> [1] - 125:7</p> <p><b>reaching</b> [1] - 142:7</p> <p><b>read</b> [15] - 74:4, 94:17, 95:2, 95:19, 101:17, 101:19, 102:3, 102:4, 103:13, 103:14, 137:18, 179:11, 180:14, 180:23, 200:13</p> <p><b>reading</b> [3] - 97:3, 148:17, 183:23</p> <p><b>Real</b> [1] - 179:6</p> <p><b>realized</b> [2] - 184:3, 186:8</p> <p><b>rearranged</b> [1] - 102:20</p> <p><b>reason</b> [7] - 60:21, 121:5, 121:8, 141:10, 155:20, 194:4, 200:23</p> <p><b>reasonable</b> [4] - 69:4, 82:3, 98:14, 174:22</p> <p><b>reasons</b> [2] - 89:15, 115:2</p> <p><b>recalculate</b> [1] - 169:6</p>			

<p>95:3, 96:25, 101:11, 101:16, 101:24, 102:15, 138:14, 148:22, 150:21, 151:8, 152:2, 152:21, 154:3, 158:8</p> <p><b>remedies</b> [1] - 180:15</p> <p><b>remedy</b> [1] - 180:17</p> <p><b>remember</b> [18] - 64:19, 71:20, 97:12, 106:7, 113:15, 113:17, 125:6, 132:16, 132:18, 134:11, 142:16, 154:8, 156:16, 175:22, 186:4, 200:11, 200:22</p> <p><b>remind</b> [1] - 74:22</p> <p><b>remittent</b> [1] - 167:24</p> <p><b>remove</b> [1] - 115:13</p> <p><b>rent</b> [22] - 73:20, 75:12, 75:25, 110:14, 110:16, 117:8, 119:7, 121:5, 132:13, 172:22, 172:25, 174:2, 174:6, 175:4, 175:13, 175:14, 176:9, 177:8, 179:7, 179:24, 180:25, 181:12</p> <p><b>rent-stabilized</b> [1] - 177:8</p> <p><b>rented</b> [1] - 179:14</p> <p><b>rents</b> [1] - 195:24</p> <p><b>rephrase</b> [3] - 99:9, 105:6, 152:19</p> <p><b>Reporter</b> [6] - 63:15, 104:20, 132:3, 178:19, 187:21, 189:24</p> <p><b>represent</b> [2] - 73:24, 193:12</p> <p><b>representations</b> [1] - 64:4</p> <p><b>representative</b> [1] - 107:20</p> <p><b>representing</b> [1] - 174:21</p> <p><b>request</b> [2] - 124:14, 124:16</p> <p><b>REQUESTED</b> [1] - 204:23</p> <p><b>require</b> [2] - 125:11, 126:9</p> <p><b>required</b> [3] - 93:5, 93:18, 146:23</p> <p><b>requires</b> [1] - 146:8</p> <p><b>research</b> [1] - 194:13</p> <p><b>reserve</b> [4] - 60:18, 60:23, 120:23, 123:2</p> <p><b>reserved</b> [1] - 58:22</p> <p><b>reside</b> [1] - 59:11</p> <p><b>residents</b> [1] - 122:7</p> <p><b>resolved</b> [1] - 90:7</p> <p><b>respective</b> [2] - 58:6, 190:17</p> <p><b>respond</b> [1] - 82:25</p>	<p><b>responding</b> [1] - 88:5</p> <p><b>Response</b> [2] - 61:18, 61:20</p> <p><b>response</b> [1] - 146:23</p> <p><b>responsibilities</b> [2] - 116:20, 118:4</p> <p><b>responsibility</b> [4] - 70:25, 71:4, 116:22, 178:7</p> <p><b>responsible</b> [2] - 71:8, 177:14</p> <p><b>rest</b> [1] - 130:22</p> <p><b>restate</b> [1] - 158:15</p> <p><b>restaurant</b> [1] - 194:11</p> <p><b>restaurants</b> [1] - 194:12</p> <p><b>restrain</b> [2] - 146:19, 204:8</p> <p><b>restraining</b> [14] - 62:23, 64:13, 66:6, 67:2, 67:5, 68:4, 137:17, 138:7, 146:18, 150:5, 151:7, 151:25, 152:8, 153:20</p> <p><b>restraint</b> [18] - 63:20, 64:21, 66:15, 66:19, 69:10, 77:5, 92:12, 93:20, 146:6, 148:2, 148:5, 149:6, 149:9, 149:18, 150:19, 153:8, 156:4, 170:13</p> <p><b>restraints</b> [7] - 64:25, 80:18, 80:24, 149:23, 151:17, 151:21, 153:5</p> <p><b>retained</b> [1] - 204:17</p> <p><b>retrospect</b> [1] - 185:6</p> <p><b>return</b> [1] - 188:12</p> <p><b>returns</b> [1] - 137:4</p> <p><b>review</b> [14] - 71:25, 82:23, 84:8, 86:11, 86:13, 86:25, 87:6, 92:2, 115:15, 167:23, 177:16, 197:10, 199:2, 200:14</p> <p><b>reviewing</b> [1] - 198:21</p> <p><b>right</b> [46] - 59:24, 60:9, 60:23, 62:9, 69:12, 70:5, 70:6, 72:3, 92:15, 99:14, 120:22, 132:15, 135:4, 135:19, 137:7, 146:9, 158:2, 158:12, 159:8, 159:18, 159:20, 159:21, 163:11, 164:13, 166:17, 168:4, 171:9, 171:22, 172:20, 172:23, 176:25, 177:3, 177:17, 177:18, 177:21, 179:15, 181:4, 181:15, 181:16, 182:5, 182:7, 186:15, 187:13, 199:3, 200:14</p> <p><b>rights</b> [2] - 60:18, 176:11</p> <p><b>Ronald</b> [3] - 141:8, 141:17, 142:12</p> <p><b>Ronnie</b> [2] - 142:6,</p>	<p>142:11</p> <p><b>ROSEWALL</b> [6] - 56:9, 56:10, 56:10, 57:15, 57:15, 57:16</p> <p><b>Rosewall</b> [28] - 74:9, 75:6, 105:8, 105:10, 105:23, 106:17, 107:15, 107:22, 108:3, 108:7, 108:22, 109:14, 114:3, 114:14, 115:20, 133:16, 172:18, 192:14, 192:20, 193:4, 194:2, 194:6, 194:21, 195:4, 195:7, 195:9, 195:13, 198:19</p> <p><b>Rosewall's</b> [1] - 107:20</p> <p><b>rough</b> [1] - 85:18</p> <p><b>roughly</b> [10] - 78:10, 78:23, 79:25, 80:16, 81:3, 86:8, 88:12, 88:15, 91:20, 154:13</p> <p><b>rudimentary</b> [1] - 173:3</p> <p><b>Rules</b> [1] - 56:21</p> <p><b>run</b> [7] - 107:3, 168:19, 168:21, 169:11, 170:2, 170:7, 171:20</p> <p><b>running</b> [5] - 59:17, 106:12, 168:16, 169:9, 169:14</p> <p><b>runs</b> [1] - 169:8</p> <p><b>Rye</b> [1] - 59:12</p>	<p>187:3</p> <p><b>scans</b> [1] - 173:10</p> <p><b>school</b> [4] - 118:22, 118:24, 119:2, 119:4</p> <p><b>screen</b> [8] - 61:21, 127:3, 136:12, 136:22, 138:3, 155:7, 162:21, 162:22</p> <p><b>screwed</b> [4] - 95:22, 103:7, 133:3, 199:13</p> <p><b>screwy</b> [1] - 132:15</p> <p><b>sealing</b> [1] - 58:7</p> <p><b>search</b> [3] - 74:24, 82:20, 84:16</p> <p><b>second</b> [8] - 62:11, 63:3, 69:18, 146:5, 161:19, 169:11, 177:12, 186:16</p> <p><b>secondhand</b> [1] - 111:20</p> <p><b>section</b> [2] - 65:8, 180:3</p> <p><b>seeing</b> [1] - 124:22</p> <p><b>seeking</b> [2] - 70:3, 183:19</p> <p><b>seeks</b> [2] - 174:15, 174:19</p> <p><b>seemed</b> [1] - 183:22</p> <p><b>seems</b> [1] - 201:10</p> <p><b>seen</b> [4] - 123:25, 156:13, 156:21, 175:18</p> <p><b>send</b> [32] - 67:4, 67:9, 67:14, 67:19, 79:11, 80:11, 80:13, 81:10, 81:11, 81:15, 81:19, 89:6, 93:19, 97:8, 108:11, 108:16, 125:17, 126:22, 139:21, 139:24, 139:25, 140:7, 141:10, 149:6, 149:24, 150:20, 156:22, 157:8, 165:16, 166:14, 167:10, 167:20</p> <p><b>sending</b> [1] - 159:9</p> <p><b>sends</b> [5] - 74:22, 79:12, 81:3, 84:7, 156:6</p> <p><b>sense</b> [1] - 140:3</p> <p><b>sent</b> [17] - 61:5, 70:9, 79:19, 86:21, 92:23, 135:22, 140:9, 149:10, 149:18, 150:19, 151:25, 152:8, 153:21, 156:4, 166:24, 191:11, 194:10</p> <p><b>sentence</b> [7] - 94:17, 94:18, 95:3, 95:11, 95:20, 99:3, 148:13</p> <p><b>separate</b> [3] - 63:9, 66:20, 162:24</p> <p><b>separated</b> [1] - 137:11</p> <p><b>Sepco</b> [1] - 118:12</p> <p><b>serve</b> [2] - 79:6, 184:5</p> <p><b>served</b> [5] - 188:8, 188:16, 188:21, 190:7</p> <p><b>server</b> [6] - 184:5, 188:11, 188:25, 189:12,</p>
<b>S</b>			
<p><b>same</b> [18] - 58:12, 58:15, 58:17, 77:6, 85:16, 95:11, 97:14, 139:16, 140:23, 146:12, 148:20, 150:15, 154:22, 157:20, 166:7, 167:11, 172:18, 194:16</p> <p><b>sat</b> [3] - 136:25, 151:14, 195:25</p> <p><b>satisfied</b> [6] - 103:18, 133:17, 133:19, 137:9, 137:14, 167:19</p> <p><b>saw</b> [2] - 132:19, 199:8</p> <p><b>saying</b> [34] - 69:25, 95:13, 96:15, 98:2, 99:5, 99:8, 99:22, 102:18, 102:21, 103:9, 103:19, 103:20, 103:22, 117:25, 121:22, 122:14, 129:13, 129:17, 130:16, 134:15, 134:22, 140:13, 140:14, 140:16, 147:19, 155:12, 159:11, 161:4, 176:12, 176:13, 176:23, 194:23, 199:10</p> <p><b>scan</b> [3] - 130:3, 130:4, 130:5</p> <p><b>scanned</b> [2] - 173:4,</p>			

189:16 <b>service</b> [7] - 58:16, 80:5, 108:17, 188:3, 188:12, 188:18, 190:20 <b>SERVICES</b> [1] - 57:9 <b>serving</b> [1] - 181:10 <b>settlement</b> [1] - 200:6 <b>sheets</b> [1] - 167:24 <b>Sheryl</b> [1] - 189:13 <b>short</b> [3] - 92:9, 160:4, 191:15 <b>shorthand</b> [1] - 66:11 <b>shot</b> [2] - 82:24, 89:6 <b>shots</b> [1] - 61:21 <b>show</b> [13] - 115:24, 123:13, 128:22, 128:24, 131:14, 162:8, 163:20, 164:24, 165:2, 165:4, 185:15, 185:18, 195:20 <b>showed</b> [1] - 113:23 <b>showing</b> [9] - 62:10, 62:12, 62:18, 63:16, 104:21, 132:4, 178:20, 187:22, 189:25 <b>shows</b> [2] - 162:4, 162:5 <b>side</b> [1] - 115:4 <b>sign</b> [23] - 64:16, 65:3, 66:11, 76:19, 77:5, 77:10, 78:7, 78:14, 79:23, 79:24, 80:16, 80:20, 80:21, 81:19, 81:22, 82:8, 91:18, 92:3, 92:5, 93:8, 97:8, 120:10 <b>signature</b> [4] - 64:14, 103:10, 149:2, 189:11 <b>signed</b> [15] - 58:10, 58:12, 58:15, 65:7, 66:5, 70:22, 77:16, 91:16, 93:22, 104:5, 106:4, 138:8, 138:24, 157:17, 161:6 <b>signing</b> [5] - 64:19, 82:12, 91:5, 91:12, 91:21 <b>simple</b> [1] - 121:24 <b>sisters</b> [1] - 116:7 <b>sit</b> [1] - 195:21 <b>sitting</b> [2] - 191:6, 199:5 <b>situations</b> [1] - 199:16 <b>six</b> [2] - 106:4, 106:25 <b>sixty</b> [1] - 130:11 <b>skip</b> [1] - 95:9 <b>slate</b> [1] - 164:24 <b>slowly</b> [1] - 134:20 <b>small</b> [6] - 142:9, 154:14, 159:12, 159:14, 159:15, 159:16 <b>snapshot</b> [1] - 105:2 <b>Snapshot</b> [1] - 204:10 <b>software</b> [2] - 162:4, 162:8	<b>solely</b> [2] - 184:14, 199:21 <b>somebody</b> [6] - 132:25, 151:14, 162:12, 162:14, 184:3, 195:20 <b>somehow</b> [2] - 115:13, 183:25 <b>someone</b> [11] - 67:17, 75:17, 122:12, 125:17, 126:15, 143:20, 143:21, 169:21, 184:24, 186:10, 194:25 <b>something</b> [9] - 95:22, 96:21, 97:20, 100:16, 109:11, 132:19, 132:20, 157:4, 189:8 <b>sometime</b> [3] - 106:12, 106:23, 106:24 <b>sometimes</b> [12] - 103:7, 125:15, 137:10, 139:9, 153:13, 187:2, 187:4, 196:13, 196:14, 196:18, 196:19, 197:21 <b>somewhere</b> [2] - 119:13, 187:14 <b>sorry</b> [1] - 139:22 <b>sort</b> [4] - 96:22, 144:10, 156:16, 196:25 <b>source</b> [1] - 90:24 <b>SOUTHERN</b> [1] - 56:2 <b>space</b> [1] - 110:25 <b>Spanish</b> [2] - 173:4, 173:6 <b>speak</b> [1] - 84:25 <b>speaking</b> [10] - 78:10, 79:25, 88:2, 88:13, 88:15, 91:20, 91:25, 92:5, 123:20, 154:13 <b>specific</b> [9] - 68:21, 99:14, 100:12, 100:21, 134:23, 148:13, 161:2, 176:4, 176:10 <b>specifically</b> [2] - 98:17, 200:21 <b>specifics</b> [1] - 96:11 <b>specified</b> [1] - 203:11 <b>spend</b> [9] - 83:9, 84:12, 84:20, 85:6, 85:25, 87:12, 87:20, 88:9, 91:20 <b>spending</b> [1] - 85:21 <b>spent</b> [1] - 84:2 <b>spit</b> [2] - 92:14, 151:18 <b>spits</b> [1] - 152:20 <b>SS</b> [1] - 205:4 <b>stabilized</b> [2] - 177:8, 179:8 <b>stack</b> [5] - 64:24, 65:3, 82:12, 91:11, 91:17 <b>staff</b> [8] - 64:24, 84:25, 109:11, 126:16, 126:25,	141:25, 186:11, 186:18 <b>stage</b> [1] - 137:8 <b>stamp</b> [1] - 173:13 <b>stamped</b> [10] - 62:13, 62:19, 63:6, 104:22, 173:15, 178:21, 179:10, 180:7, 180:20, 204:10 <b>standard</b> [3] - 177:9, 179:2, 179:5 <b>start</b> [5] - 79:5, 91:12, 107:2, 142:13, 193:7 <b>started</b> [16] - 90:2, 106:5, 116:12, 118:21, 123:19, 123:21, 141:25, 143:2, 146:2, 150:15, 151:3, 155:23, 160:6, 171:11, 171:14, 193:9 <b>starting</b> [1] - 117:23 <b>State</b> [4] - 56:25, 59:4, 106:3, 205:8 <b>state</b> [1] - 59:8 <b>STATE</b> [1] - 205:4 <b>statement</b> [3] - 106:3, 147:13, 147:16 <b>statements</b> [2] - 65:9, 65:12 <b>states</b> [2] - 186:5, 188:21 <b>STATES</b> [1] - 56:2 <b>stating</b> [1] - 101:4 <b>statute</b> [1] - 105:11 <b>statute</b> [9] - 105:17, 105:21, 106:2, 106:9, 106:11, 106:15, 106:25, 107:7, 146:8 <b>statutory</b> [1] - 64:9 <b>stay</b> [1] - 144:18 <b>stayed</b> [1] - 90:3 <b>step</b> [3] - 64:12, 111:10, 111:16 <b>steps</b> [2] - 122:21, 136:6 <b>Steven</b> [1] - 141:8 <b>stip</b> [1] - 200:13 <b>STIPULATED</b> [2] - 58:5, 58:20 <b>stipulation</b> [7] - 112:20, 112:22, 129:11, 164:22, 200:4, 200:6, 200:24 <b>stipulations</b> [1] - 112:2 <b>stop</b> [1] - 169:9 <b>stopping</b> [1] - 201:11 <b>Street</b> [3] - 56:23, 57:5, 59:12 <b>stretched</b> [1] - 118:5 <b>strike</b> [1] - 184:21 <b>stuff</b> [1] - 130:3 <b>sub</b> [3] - 179:18, 180:7, 180:22 <b>sub-paragraph</b> [1] - 180:22 <b>subject</b> [1] - 60:8	<b>subparagraph</b> [1] - 180:22 <b>subpoena</b> [14] - 62:23, 63:19, 64:12, 66:6, 66:22, 66:25, 67:16, 69:9, 92:12, 93:19, 137:16, 138:6, 146:6, 148:5 <b>subpoenas</b> [15] - 64:22, 64:25, 66:11, 66:14, 67:5, 67:10, 67:15, 68:3, 68:4, 76:19, 76:23, 77:4, 80:17, 80:18, 91:8 <b>Subscribed</b> [1] - 203:18 <b>subsequent</b> [1] - 173:20 <b>subsequently</b> [2] - 105:16, 130:2 <b>substantive</b> [2] - 157:25, 158:5 <b>subtract</b> [2] - 162:11, 162:13 <b>subtraction</b> [1] - 162:3 <b>sue</b> [3] - 105:14, 175:13, 175:24 <b>sued</b> [2] - 88:19, 144:7 <b>suing</b> [3] - 172:17, 173:24, 174:2 <b>suit</b> [14] - 75:12, 75:25, 76:5, 89:19, 113:3, 117:8, 151:25, 152:6, 176:9, 181:2, 181:7, 181:12, 182:3, 190:9 <b>suitable</b> [1] - 188:22 <b>Suite</b> [1] - 57:16 <b>suits</b> [4] - 172:15, 176:2, 180:24, 195:24 <b>sum</b> [1] - 174:20 <b>summary</b> [1] - 79:8 <b>Summons</b> [1] - 204:12 <b>summons</b> [16] - 86:19, 87:7, 132:7, 132:8, 132:12, 144:23, 154:16, 173:5, 173:7, 174:15, 176:14, 183:5, 184:5, 185:23, 188:7, 188:16 <b>supervised</b> [1] - 171:3 <b>Supplemental</b> [2] - 61:18, 61:20 <b>supposed</b> [6] - 95:10, 139:13, 148:10, 158:19, 177:4, 177:6 <b>sure</b> [14] - 78:21, 89:14, 98:6, 100:14, 115:15, 121:3, 124:25, 125:23, 126:13, 127:5, 144:16, 151:23, 171:2, 176:7 <b>surely</b> [1] - 115:4 <b>sworn</b> [5] - 58:10, 59:3, 203:5, 203:18, 205:11 <b>system</b> [26] - 84:10, 109:12, 115:19, 126:24,
---	---	--	--

127:17, 144:16, 144:20, 148:9, 153:25, 160:14, 161:19, 163:14, 163:18, 163:25, 164:2, 164:11, 166:2, 166:13, 166:16, 166:21, 167:4, 176:20, 177:16, 185:7, 185:17, 187:8	123:12, 124:6, 124:24, 125:14, 126:5, 127:6, 145:2, 172:15, 173:25, 174:6, 174:8, 176:2, 185:10, 196:12 <b>tenants</b> [7] - 110:11, 113:3, 113:12, 113:14, 113:23, 123:11, 123:24 <b>tenants/debtors/defendants</b> [1] - 122:6 <b>term</b> [1] - 68:6 <b>terms</b> [1] - 66:10 <b>test</b> [1] - 146:8 <b>testified</b> [6] - 59:5, 64:23, 65:24, 76:17, 89:3, 109:17 <b>testify</b> [1] - 203:5 <b>testifying</b> [1] - 68:14 <b>testimony</b> [6] - 59:22, 184:14, 194:20, 203:6, 203:10, 205:13 <b>text</b> [9] - 96:10, 96:12, 96:16, 97:20, 98:3, 98:4, 98:11, 98:12, 98:18 <b>thank</b> [3] - 59:14, 102:23, 194:10 <b>thanked</b> [1] - 194:15 <b>thanks</b> [1] - 61:25 <b>there's</b> [2] - 138:16, 169:18 <b>thereafter</b> [1] - 88:19 <b>thereon</b> [11] - 94:21, 99:4, 99:16, 101:10, 101:25, 102:5, 102:8, 102:12, 138:12, 158:16, 160:8 <b>thing</b> [6] - 144:22, 155:25, 170:11, 180:14, 181:24, 194:9 <b>things</b> [15] - 65:25, 68:22, 71:22, 82:13, 82:17, 91:9, 91:22, 101:22, 110:25, 111:15, 139:18, 154:15, 156:9, 164:19 <b>think</b> [31] - 89:3, 109:17, 125:22, 127:10, 133:7, 134:2, 137:24, 139:14, 141:20, 143:2, 147:7, 147:9, 147:14, 147:15, 147:17, 157:9, 158:3, 158:4, 158:6, 165:21, 166:19, 167:17, 167:23, 168:5, 192:4, 194:20, 200:11, 200:15, 200:16, 201:5, 201:8 <b>thinking</b> [1] - 200:10 <b>third</b> [2] - 109:2, 174:18 <b>thirty</b> [1] - 80:7 <b>thousand</b> [13] - 74:15,	74:18, 74:20, 96:22, 119:14, 136:5, 168:23, 168:25, 169:2, 169:19, 169:23, 170:20, 172:2 <b>three</b> [7] - 67:24, 68:8, 101:22, 119:14, 128:9, 163:3, 170:5 <b>thrilled</b> [1] - 162:14 <b>through</b> [35] - 59:20, 60:4, 62:24, 64:11, 65:3, 66:9, 71:24, 76:12, 76:17, 88:21, 91:11, 104:23, 107:23, 108:3, 144:13, 165:7, 167:4, 172:10, 173:21, 174:14, 174:15, 178:22, 192:14, 192:21, 193:3, 193:14, 193:18, 194:7, 195:9, 196:5, 197:5, 198:7, 198:14, 200:2, 204:11 <b>tickler</b> [2] - 86:21, 136:4 <b>ticklers</b> [1] - 86:13 <b>tight</b> [1] - 144:9 <b>TIME</b> [1] - 56:14 <b>time</b> [61] - 58:22, 59:18, 65:4, 73:9, 73:24, 73:25, 74:14, 74:17, 75:16, 76:20, 79:23, 82:11, 82:15, 83:8, 83:12, 83:24, 84:2, 84:20, 85:14, 85:21, 85:25, 87:20, 88:8, 88:22, 89:22, 91:12, 91:18, 91:23, 91:24, 100:12, 106:8, 112:4, 113:10, 117:15, 118:19, 118:23, 130:14, 136:9, 142:5, 142:17, 142:22, 144:9, 144:19, 144:23, 147:11, 148:4, 150:6, 150:15, 150:18, 151:5, 156:12, 156:21, 176:8, 176:13, 176:14, 180:4, 180:5, 182:20, 197:12, 201:25, 203:10 <b>times</b> [4] - 74:25, 83:16, 144:8, 144:13 <b>today</b> [5] - 59:18, 97:14, 103:3, 191:6, 192:8 <b>together</b> [5] - 62:21, 62:25, 138:12, 174:22, 198:9 <b>tomorrow</b> [1] - 103:4 <b>total</b> [9] - 69:10, 137:20, 137:21, 148:16, 160:9, 164:17, 165:13, 171:9, 193:25 <b>totals</b> [1] - 162:2 <b>tough</b> [1] - 171:5 <b>towards</b> [1] - 72:16 <b>track</b> [6] - 139:18, 140:5,	140:23, 165:13, 166:4, 168:12 <b>training</b> [5] - 119:5, 119:25, 120:4, 120:6 <b>transcript</b> [3] - 65:8, 203:9 <b>treated</b> [2] - 141:24, 144:14 <b>trial</b> [7] - 58:22, 78:18, 79:8, 81:17, 81:18, 87:2, 87:10 <b>trials</b> [1] - 112:21 <b>tried</b> [1] - 141:22 <b>trouble</b> [1] - 82:24 <b>trouble-shot</b> [1] - 82:24 <b>troubleshoot</b> [1] - 87:19 <b>true</b> [36] - 65:9, 65:25, 84:14, 85:8, 86:6, 86:8, 87:15, 87:17, 87:23, 88:3, 88:12, 88:16, 98:4, 113:4, 113:6, 113:7, 113:8, 114:6, 122:24, 136:19, 138:20, 145:19, 152:11, 152:15, 153:8, 153:10, 153:11, 153:13, 157:4, 159:3, 181:5, 181:6, 185:6, 186:22, 203:9, 205:12 <b>trust</b> [2] - 134:12, 141:19 <b>truth</b> [1] - 203:5 <b>try</b> [4] - 60:19, 82:22, 145:18, 167:9 <b>trying</b> [15] - 70:24, 71:3, 85:18, 89:6, 100:11, 110:11, 110:13, 110:18, 117:18, 154:18, 158:15, 160:7, 161:11, 186:7, 187:6 <b>Tuesday</b> [1] - 156:12 <b>turn</b> [1] - 113:18 <b>tweaking</b> [2] - 157:25, 158:2 <b>tweaks</b> [1] - 157:24 <b>twenty</b> [3] - 87:22, 119:13, 119:14 <b>twenty-five</b> [3] - 87:22, 119:13, 119:14 <b>twice</b> [1] - 155:21 <b>typed</b> [1] - 151:15 <b>typical</b> [3] - 77:12, 82:18, 82:19 <b>typically</b> [2] - 66:18, 78:14
<b>T</b>		<b>U</b>	
<b>table</b> [2] - 195:21, 195:25 <b>take</b> [16] - 60:19, 79:22, 89:10, 92:7, 92:19, 111:6, 122:21, 130:8, 136:6, 160:2, 171:19, 177:11, 180:5, 191:13, 193:14, 195:21 <b>taken</b> [4] - 56:19, 92:10, 160:5, 191:16 <b>taking</b> [3] - 79:7, 91:14, 155:11 <b>talk</b> [1] - 155:6 <b>talked</b> [7] - 71:6, 91:6, 91:10, 98:17, 158:14, 166:9, 186:17 <b>talking</b> [5] - 69:8, 135:16, 135:17, 151:2, 160:6 <b>tasks</b> [4] - 85:4, 87:4, 87:5, 91:5 <b>TD</b> [1] - 63:5 <b>tell</b> [24] - 62:11, 62:25, 63:20, 75:8, 75:11, 75:13, 82:14, 88:4, 117:13, 134:14, 135:10, 137:9, 147:21, 161:19, 162:19, 162:22, 163:8, 163:18, 167:14, 167:18, 171:24, 172:3, 172:6, 179:10 <b>tells</b> [3] - 136:8, 167:25, 189:9 <b>template</b> [15] - 96:2, 96:10, 97:13, 97:14, 97:16, 98:8, 98:18, 102:19, 102:20, 102:25, 146:7, 146:11, 146:12, 147:11, 157:20 <b>ten</b> [5] - 78:12, 86:5, 87:14, 88:10, 193:24 <b>tenancy</b> [1] - 110:8 <b>tenant</b> [46] - 109:19, 109:25, 110:6, 110:8, 110:9, 110:10, 110:15, 111:3, 111:12, 111:18, 111:22, 111:24, 112:5, 112:11, 112:15, 113:2, 113:5, 114:17, 114:22, 115:3, 115:8, 115:14, 119:18, 120:20, 121:4, 121:11, 121:15, 121:19, 122:15, 122:20, 123:9,		<b>ultimately</b> [2] - 133:8, 175:20 <b>unclear</b> [3] - 68:10, 68:24, 100:3	

<p><b>uncommon</b> [2] - 123:7, 123:8</p> <p><b>under</b> [3] - 93:6, 119:15, 145:14</p> <p><b>underneath</b> [1] - 94:6</p> <p><b>understand</b> [6] - 68:8, 68:18, 68:20, 121:3, 143:9, 171:6</p> <p><b>understanding</b> [2] - 107:21, 115:5</p> <p><b>understood</b> [2] - 69:5, 144:11</p> <p><b>unfolded</b> [1] - 115:9</p> <p><b>UNITED</b> [1] - 56:2</p> <p><b>unlike</b> [1] - 137:23</p> <p><b>unlikely</b> [1] - 185:13</p> <p><b>unpaid</b> [20] - 94:22, 95:3, 96:25, 101:13, 101:16, 101:24, 102:16, 138:14, 148:22, 148:25, 149:20, 150:7, 150:22, 151:8, 152:3, 152:7, 152:10, 152:21, 154:3, 158:8</p> <p><b>unrelated</b> [2] - 193:11, 194:8</p> <p><b>unsigned</b> [1] - 58:14</p> <p><b>updated</b> [1] - 186:13</p> <p><b>upstate</b> [2] - 143:20, 143:21</p> <p><b>useless</b> [1] - 126:19</p> <p><b>uses</b> [2] - 139:10, 150:7</p> <p><b>usually</b> [6] - 66:23, 80:3, 126:8, 155:18, 171:10, 177:7</p>	<p>60:17, 60:18, 60:23, 92:17, 101:18, 124:25, 139:16, 151:22, 163:13, 179:9</p> <p><b>wanted</b> [1] - 142:7</p> <p><b>was it</b> [3] - 114:14, 195:22, 197:14</p> <p><b>was she</b> [2] - 118:21, 120:7</p> <p><b>was that</b> [10] - 71:17, 85:8, 86:8, 87:15, 88:12, 89:19, 106:6, 123:15, 189:5, 200:9</p> <p><b>was there</b> [3] - 109:22, 125:8, 194:4</p> <p><b>ways</b> [2] - 101:18, 108:13</p> <p><b>wearing</b> [1] - 117:19</p> <p><b>website</b> [1] - 126:16</p> <p><b>week</b> [31] - 76:20, 76:24, 77:5, 77:7, 77:14, 77:23, 78:4, 78:14, 80:2, 80:6, 80:17, 80:19, 80:21, 81:4, 81:15, 81:19, 81:23, 82:3, 82:5, 82:8, 82:18, 83:12, 83:16, 84:11, 85:6, 87:12, 87:21, 88:8, 91:4, 91:21</p> <p><b>were you</b> [3] - 85:21, 173:24, 174:2</p> <p><b>what are</b> [1] - 86:18</p> <p><b>what did</b> [3] - 111:24, 143:10, 179:3</p> <p><b>what is</b> [16] - 66:4, 77:12, 79:3, 92:4, 92:5, 92:21, 99:7, 105:20, 106:22, 110:21, 154:25, 155:2, 155:4, 159:14, 173:13, 181:3</p> <p><b>what was</b> [3] - 154:11, 156:8, 194:14</p> <p><b>what were</b> [1] - 116:19</p> <p><b>when did</b> [2] - 116:16, 142:13</p> <p><b>when is</b> [1] - 86:21</p> <p><b>when you</b> [40] - 93:8, 93:22, 95:19, 104:4, 108:9, 108:10, 109:17, 110:10, 111:2, 111:23, 114:12, 115:17, 117:21, 122:19, 124:3, 124:17, 124:24, 135:20, 138:24, 142:11, 143:15, 149:5, 150:18, 151:4, 151:6, 152:8, 153:4, 156:4, 171:17, 175:6, 175:25, 179:2, 180:24, 181:11, 183:11, 186:17, 195:12, 196:5, 197:4, 201:2</p> <p><b>whenever</b> [1] - 123:17</p> <p><b>where is</b> [1] - 186:14</p> <p><b>WHEREOF</b> [1] - 205:19</p>	<p><b>Whereupon</b> [11] - 62:15, 63:11, 92:9, 104:17, 131:24, 160:4, 178:16, 187:18, 189:21, 191:15, 202:2</p> <p><b>who are</b> [1] - 95:7</p> <p><b>who is</b> [2] - 70:20, 71:8</p> <p><b>whole</b> [2] - 95:3, 169:9</p> <p><b>why</b> [25] - 70:17, 83:22, 85:12, 97:8, 97:10, 97:11, 101:14, 117:16, 127:10, 139:17, 140:4, 141:10, 145:24, 153:2, 153:24, 154:18, 166:18, 166:24, 168:12, 174:11, 175:11, 183:16, 200:15, 200:16, 200:18</p> <p><b>wise</b> [1] - 159:5</p> <p><b>withdrawn</b> [1] - 184:21</p> <p><b>withheld</b> [1] - 131:13</p> <p><b>within</b> [2] - 58:8, 205:8</p> <p><b>without</b> [3] - 67:5, 122:12, 136:16</p> <p><b>witness</b> [8] - 56:18, 58:10, 58:16, 58:18, 59:3, 202:3, 205:10, 205:13</p> <p><b>WITNESS</b> [1] - 205:19</p> <p><b>woman</b> [2] - 114:8, 114:25</p> <p><b>word</b> [2] - 102:13, 158:18</p> <p><b>words</b> [11] - 60:10, 60:14, 60:15, 60:19, 90:2, 144:21, 167:19, 170:20, 194:15, 197:20, 198:6</p> <p><b>wore</b> [1] - 109:21</p> <p><b>work</b> [11] - 80:15, 111:24, 118:7, 121:13, 121:16, 142:7, 143:12, 143:24, 154:15, 195:10</p> <p><b>worked</b> [13] - 109:17, 109:20, 112:4, 116:7, 116:20, 118:16, 119:16, 143:10, 144:9, 178:4, 178:6, 189:16, 195:17</p> <p><b>working</b> [3] - 116:13, 116:16, 118:21</p> <p><b>works</b> [1] - 194:25</p> <p><b>world</b> [1] - 110:7</p> <p><b>worn</b> [1] - 142:6</p> <p><b>wouldn't</b> [3] - 89:10, 165:25, 170:9</p> <p><b>wounds</b> [1] - 144:7</p> <p><b>write</b> [2] - 111:25, 112:20</p> <p><b>written</b> [7] - 81:12, 96:19, 99:20, 99:21, 177:22, 179:24, 199:4</p> <p><b>wrong</b> [12] - 88:20, 97:20, 100:17, 123:8, 129:18, 147:20, 158:21, 160:22, 186:19, 186:20,</p>	<p>187:4, 197:14</p> <p><b>wrote</b> [2] - 198:15, 199:14</p>
<b>Y</b>			
			<p><b>yeah</b> [1] - 179:12</p> <p><b>year</b> [14] - 75:2, 75:5, 78:3, 78:5, 80:14, 83:10, 83:15, 83:18, 116:3, 117:18, 168:23, 169:4, 169:13, 169:16</p> <p><b>years</b> [13] - 83:19, 83:21, 85:17, 97:17, 106:4, 106:25, 113:10, 113:16, 119:9, 119:11, 119:17, 124:2, 176:22</p> <p><b>yes</b> [174] - 59:25, 61:2, 61:8, 63:7, 63:24, 64:7, 64:15, 67:6, 67:7, 67:12, 67:13, 67:21, 67:23, 68:5, 68:9, 68:16, 69:2, 69:7, 69:13, 69:21, 72:4, 72:18, 72:21, 77:8, 77:15, 78:6, 79:14, 81:6, 81:13, 82:6, 82:16, 83:14, 84:15, 84:18, 86:7, 86:17, 87:16, 87:18, 88:14, 88:25, 89:5, 90:13, 90:18, 91:19, 93:11, 93:14, 93:21, 94:5, 94:10, 95:12, 96:7, 96:14, 99:2, 99:20, 102:21, 106:21, 107:3, 107:9, 107:17, 108:5, 108:12, 109:4, 109:7, 109:9, 109:15, 110:4, 110:20, 111:6, 112:6, 112:9, 112:13, 112:17, 113:23, 114:18, 116:5, 116:15, 117:10, 117:12, 118:15, 120:16, 121:7, 121:12, 121:21, 122:13, 122:18, 124:25, 127:15, 129:3, 131:8, 131:11, 133:11, 136:15, 139:3, 143:19, 143:23, 144:2, 145:8, 145:12, 145:15, 145:22, 146:10, 146:22, 147:4, 147:24, 148:19, 148:23, 149:8, 149:13, 149:22, 150:9, 151:11, 151:20, 152:6, 156:19, 157:16, 157:19, 157:23, 158:12, 159:25, 160:25, 161:3, 161:9, 161:10, 161:17, 163:20, 167:8, 167:11, 167:13, 170:4, 170:9, 171:10, 171:16, 172:21, 173:17, 175:5, 175:19, 175:23, 176:7, 177:19, 178:5, 178:10, 178:12,</p>

178:25, 179:17, 179:20,  
 181:10, 182:3, 182:9,  
 183:7, 184:16, 184:19,  
 184:23, 187:4, 187:10,  
 188:5, 188:10, 188:14,  
 189:17, 190:5, 190:16,  
 192:12, 192:16, 193:21,  
 194:7, 196:9, 197:8,  
 197:18, 198:21, 200:8,  
 200:20, 200:25

**yesterday** [3] - 134:15,  
 155:14, 155:20

**YORK** [2] - 56:2, 205:4

**York** [11] - 56:23, 56:25,  
 57:5, 57:11, 57:17, 59:4,  
 59:13, 106:3, 143:25,  
 179:7, 205:8

**yourself** [1] - 103:16

## Z

**zero** [27] - 94:16, 94:20,  
 94:22, 94:24, 95:2, 95:4,  
 97:6, 97:7, 99:4, 99:5,  
 99:15, 99:17, 99:18,  
 101:7, 101:9, 101:24,  
 102:2, 103:11, 104:11,  
 158:13, 158:15, 160:8,  
 160:13, 160:15, 160:17,  
 161:5

°

° [4] - 202:6